

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF TEXAS
3 HOUSTON DIVISION

4 RULFORD G. ALDRIDGE, . Civil Action
5 . No. H-05-608
6 Petitioner, .
7 .
8 VS. .
9 .
10 NATHANIEL QUARTERMAN, .
11 . March 2, 2009
12 Respondent. . 9:00 A.M.
13 . HOUSTON, TEXAS

14 TRANSCRIPT of PROCEEDINGS
15 BEFORE THE HONORABLE GRAY H. MILLER
16 UNITED STATES DISTRICT JUDGE

17 APPEARANCES:

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19 MR. PHILIP HARLAN HILDER
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26 ALSO PRESENT: Mr. Rulford G. Aldridge

27 Proceedings recorded by mechanical stenography, transcript
28 produced by computer-aided transcription.

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1 P R O C E E D I N G S

2 (March 2, 2009)

3 THE COURT: All right. I understand that by
4 agreement we are going to interrupt the cross-examination of
09:05:09AM 5 Dr. Mosnik and put Mr. Davis on the stand; is that correct?

6 MS. HAYES: That is correct, Your Honor.

7 THE COURT: All right. Mr. Davis, come forward and
8 recall that you are still under oath and have a seat in the
9 witness chair.

09:05:23AM 10 THE WITNESS: Yes, sir.

11 THE COURT: Thank you.

12 (DOUG DAVIS, witness, previously sworn.)

13 DIRECT EXAMINATION

14 BY MS. HAYES:

09:05:37AM 15 Q. Good morning, Mr. Davis.

16 A. Good morning.

17 Q. Would you explain for the Court a little bit about your
18 professional experience?

19 A. I initially started at the district attorney's office in
09:05:50AM 20 Harris County back in 1980, and I left that office in
21 approximately mid-1987. During that time I had occasion to
22 try everything from traffic tickets up to capital murders. I
23 tried -- oh, at the time I probably had a hundred or better
24 jury trials. Those included murders, robberies, sexual
09:06:25AM 25 assaults, thefts, pretty much run the gambit of almost any

1 type of crime.

2 After that I went to a civil firm for
3 approximately nine months. And after being ready to shoot
4 myself, I left the civil practice. And I hooked up with a
09:06:48AM 5 friend of mine who also had been at the district attorney's
6 office; and we practiced together, I guess, for, I don't know,
7 four or five years.

8 And then I decided to apply at the
9 U.S. Attorney's Office in 1992; and I have been there ever
09:07:06AM 10 since, which is -- will be 17 years next month.

11 Q. Now, in your experience from -- say, from '80 through
12 '90, when the trial was, what specific experience did you have
13 with mentally ill defendants?

14 A. It had mostly been through my time at the district
09:07:30AM 15 attorney's office. Generally, as I think I stated earlier, a
16 defense lawyer would approach me and say that he thought that
17 there were possible problems with the competency of his client
18 or sometimes sanity. So, generally, what we would do was to
19 have an eval --

09:07:54AM 20 MR. RYTTING: Your Honor, can I have a time frame or
21 maybe a specific case, rather than --

22 A. I have no idea what the specific dates would have been on
23 those. That would have been, you know, 30 years ago. But
24 there were a number of them.

09:08:12AM 25 And, generally, what would happen is after the

1 defense lawyer indicated there was some difficulty or problem
2 with his client's competency, we'd have an eval --

3 MR. RYTTING: I have an objection to the hearsay, as
4 well.

09:08:25AM 5 THE COURT: Overruled.

6 A. We would have an evaluation done generally by a member --
7 usually it would be a member of the -- I guess it would be
8 someone employed by the county, a psychiatrist or
9 psychologist.

09:08:44AM 10 And if the doctor indicated that he thought
11 that the individual was incompetent, usually what we would do
12 would be to convene a jury -- it would be six people -- and we
13 would voir dire the jury as to their ability to consider that
14 type of evidence.

09:09:06AM 15 Sometimes we would have the doctor testify.
16 Generally, what would happen would be we would present the
17 report of the doctor. At that point the defense would
18 indicate that -- and ask the jury to find the client -- his
19 client incompetent.

09:09:24AM 20 Usually, what I would do would be to agree to
21 that and tell the jury the same thing, that we were in
22 agreement on it, and that I felt based on the evidence that
23 the person should be found incompetent. And that was usually
24 the way it went.

09:09:42AM 25 BY MS. HAYES:

1 Q. So, in that role with you in the district attorney's
2 office, it is not -- you wouldn't have a State's expert that's
3 your own, would you? Or would it be a Court-appointed expert?

09:09:57AM 4 A. It wasn't someone generally that I had anything to do
5 with. It would be -- the doctor would be appointed by the
6 Court.

7 Q. If there were -- and would you be able to ask questions
8 of the expert in advance of the hearing; or would that be
9 something that, as the Court's expert, they're off limits?

09:10:17AM 10 A. No. You could speak --

11 MR. RYTTING: Your Honor, I have an objection to the
12 relevance of this line of questioning to this case.

13 MS. HAYES: Well, Your Honor, I'm trying to
14 establish any kind of mental health experience that Doug Davis
09:10:29AM 15 has coming into the defense on this case.

16 THE COURT: All right. Overruled.

17 A. Certainly you could speak to the doctor about it, if the
18 need arose.

19 BY MS. HAYES:

09:10:42AM 20 Q. Do you remember whether you ever had an opportunity to
21 speak with any of those doctors?

22 A. I can't recall any, but I'm sure that I did.

23 Q. Now, of the cases that you had with the mentally ill
24 defendants, how many would you guess that you handled while
09:11:00AM 25 you were at the district attorney's office?

1 MR. RYTTING: I object to the guessing, Your Honor.

2 THE COURT: Estimate.

3 MS. HAYES: Yes.

4 THE COURT: If you can.

09:11:09AM 5 A. I would estimate 15 to 20.

6 BY MS. HAYES:

7 Q. Now, when you left there and went to the civil firm, did
8 you have any dealings with mentally ill individuals?

9 A. No.

09:11:26AM 10 Q. How about when you started the defense practice with your
11 partner, that would be -- you were together four or
12 five years, what about experience with mentally ill defendants
13 at that point?

14 A. Again, I can't recall any specifics; but I feel sure that
09:11:47AM 15 I would have some clients who were mentally ill.

16 Q. Do you recall any that -- besides Mr. Aldridge, do you
17 recall any where you've had -- you've tried to get a
18 psychiatrist to assess someone, or a psychologist?

19 A. I'm positive that I did; but, again, I couldn't put a
09:12:09AM 20 finger on a particular case.

21 Q. And then now, the U.S. Attorney's Office, do you have
22 opportunity to have dealings with mentally ill defendants
23 there?

24 A. Not personally; but through the defense lawyer, yes.

09:12:29AM 25 Q. When -- you testified last Thursday that you had hired

1 Randy Bates -- or Randolph Bates as co-counsel, and I believe
2 you said that it was because of possible animosity with the
3 defendant. Could you explain what you mean?

09:12:58AM 4 A. Well, my understanding was that Mr. Aldridge was a black
5 Muslim. My feeling was -- is that the majority of folks who
6 practice that particular, I guess, religion were somewhat
7 hostile to white people. And, again, I think the reason that
8 I -- one of the reasons that I got Randy Bates was he is
9 African American, and I thought that he would be a good bridge
09:13:27AM 10 of conduit and could assist in communicating with Mr. Aldridge
11 where there would be less hostility.

12 Q. Do you remember whether there was any hostility with
13 Mr. Aldridge?

14 A. No. There really was not much that I could see. No
09:13:47AM 15 overt hostility. He never seemed to lose his temper with me
16 that I can recall. So, I guess things went fairly well along
17 those lines.

18 Q. Okay. Now, if Mr. Bates is the bridge, sort of, to
19 assisting with Mr. Aldridge, were you -- did one or the other
09:14:16AM 20 of you then have the lead role in working with Mr. Aldridge,
21 or was it still the same --

22 MR. RYTTING: I will have to object to the leading
23 question.

24 MS. HAYES: I guess I could rephrase that.

09:14:26AM 25 THE COURT: All right. Very good. Thank you.

1 BY MS. HAYES:

2 Q. How would you describe the roles that both you and
3 Mr. Bates had in working with Mr. Aldridge?

4 A. Generally, we would both go see Mr. Aldridge. And I
09:14:44AM 5 don't remember for sure but I would think that Randy probably
6 began speaking to Mr. Aldridge initially and then I would --
7 would be there to chime in or speak to him. But it was both
8 of us for the most part, but I suspect at least early on that
9 Randy took the lead.

09:15:11AM 10 Q. How in particular -- besides the fact that Mr. Aldridge
11 being a Muslim, how in particular did you decide on Randy
12 Bates? I mean, had you -- did you -- how did you know him
13 before this, or was he just appointed?

14 MR. RYTTING: I'll have to object to the statement
09:15:31AM 15 that Mr. Aldridge is a Muslim. That's not -- it is not clear
16 that he is practicing any particular religion.

17 THE COURT: Well, I think Mr. Davis is expressing
18 his opinion about that. So, I'm going to overrule that.

19 Do you remember the question?

09:15:50AM 20 THE WITNESS: Yes, I do, Judge. It took me a
21 second.

22 A. I knew Randy through contacts with him during my work
23 with the district attorney's office. He would represent a
24 number of clients. We had a number of dealings with each
09:16:07AM 25 other in court.

1 BY MS. HAYES:

2 Q. So, would it be fair that you had an opportunity to see
3 how he performed in court?

4 A. Yes.

09:16:17AM 5 Q. And would you give your opinion of how qualified you
6 think Mr. Bates is? Or unqualified?

7 A. I certainly thought he was qualified, or I wouldn't have
8 requested that the judge appoint him as co-counsel. He is a
9 smart guy. He's a likeable guy. I thought he would be a good
09:16:41AM 10 man to work with in that his personality would certainly help
11 with Mr. Aldridge.

12 Q. Now, do you remember whether, in the course of defending
13 Mr. Aldridge, whether you and Mr. Bates conferred throughout;
14 or were -- I guess another way -- were some tasks that just
09:17:09AM 15 you were going to do, you didn't have to correspond or talk
16 with Mr. Bates?

17 A. I think we pretty well corresponded throughout the trial.
18 I'm sure that there were some witnesses that he would have
19 taken to interview and to examine on the stand, that type of
09:17:33AM 20 thing.

21 Q. Well, from what you -- do you remember whether Mr. Bates
22 had any experience handling mentally ill defendants before his
23 appointment to this case?

24 A. That I couldn't tell you. So, I would assume that he
09:17:53AM 25 did; but I don't -- I can't say that for sure.

1 Q. From your assessment of Mr. Bates' experience and
2 performance, if a problem arose when you were dealing with
3 Mr. Aldridge --

4 MR. RYTTING: I'll object to the leading question.

09:18:15AM 5 THE COURT: All right. Rephrase.

6 BY MS. HAYES:

7 Q. Assuming a problem arose in dealing with Mr. Aldridge,
8 how comfortable are you that Randy Bates would let you know?

9 A. Very comfortable.

09:18:31AM 10 MR. RYTTING: Speculation, Your Honor.

11 THE COURT: All right. Overruled.

12 BY MS. HAYES:

13 Q. Would you explain?

14 A. Well, as I say, Randy and I got along pretty well. I
09:18:43AM 15 don't think there was any professional one upsmanship. We
16 were working this as a team. And if there had been a problem,
17 that would have been the approach that we would have taken as
18 a team. We would have consulted each other.

19 Q. If a problem had arisen in Mr. Aldridge's case -- if --
09:19:11AM 20 for example, if you weren't able to communicate with him, what
21 steps would you take?

22 A. If we had had difficulty in communicating with
23 Mr. Aldridge to --

24 MR. RYTTING: Calls for a speculation, Your Honor.

09:19:23AM 25 THE COURT: Overruled.

09:19:45AM 1 A. -- to the extent that it really affected our ability to
2 represent him, then I certainly would have approached the
3 judge. If it had to do with his competency, I would have
4 requested a competency hearing from the Court; or if it was
5 just some type of hostility or animosity where he refused to
6 speak to us, I would have approached the judge and let him
7 know that.

8 MR. RYTTING: Your Honor, we -- I'll have to object.
9 This has been asked and answered. We went over this during
09:20:00AM 10 the first session with Mr. Davis.

11 THE COURT: All right. I am going to give her some
12 latitude on the direct. Overruled.

13 BY MS. HAYES:

14 Q. From your recollection of your entire defense of
09:20:18AM 15 Mr. Aldridge's case, did the opportunity ever arise that you
16 had to apprise the Court of any problems?

17 A. No.

18 Q. How often was -- throughout the course of the defense,
19 how often did you have direct contact with Mr. Aldridge?

09:20:44AM 20 A. Pretty often. Again, I couldn't give you an exact number
21 of times that we just went over to interview him at the jail
22 or during the course of our representation of him in court;
23 but it would have been a fair number of times.

24 Q. Throughout the entire period of representation, did you
09:21:15AM 25 see -- or were you able to tell any differences in

1 Mr. Aldridge's behavior?

2 A. During the course of the time that I have dealt with him,
3 he appeared to be -- again, having the mental problems, he
4 appeared to be on an even keel. There was no change in his
09:21:36AM 5 attitude or the way he approached things that I noticed.

6 Q. Well, in addition to just his behavior, were you ever
7 made aware of different thoughts or different beliefs that had
8 changed radically or changed dramatically --

9 MR. RYTTING: Your Honor, this has been asked and
09:21:59AM 10 answered. He testified that he doesn't remember anything
11 except that the defendant said he had been sexually assaulted
12 and raped by the victim.

13 THE COURT: All right. Overruled.

14 A. He, again, had these odd beliefs. He pretty much
09:22:18AM 15 continued to hold those odd beliefs throughout.

16 BY MS. HAYES:

17 Q. I guess what I'm -- what I want you to focus on, too, is
18 as the trial progressed -- or as it was getting closer to
19 trial, do you remember whether any of this got more overblown,
09:22:41AM 20 more dramatic, more bizarre?

21 A. No. It didn't appear to.

22 Q. In your opinion, how well did Mr. Aldridge understand
23 what y'all were telling him?

24 A. He appeared to understand fine.

09:23:06AM 25 Q. How did you assess if he was able to understand what

1 y'all were talking about?

2 A. Well, just his ability to speak to us, ask questions,
3 just as you would with anybody.

09:23:36AM

4 Q. Was he -- was he capable of expressing his needs, or do
5 you remember?

6 A. I don't really recall.

09:24:00AM

7 Q. Now, last year, if you remember, I had asked for a
8 subpoena about -- I was trying to find records, some trial
9 records. Did you have an opportunity to look and check where
10 any of your trial records and trial notes may have been?

11 A. I don't have any of them anymore.

09:24:30AM

12 Q. Even if specific -- I know 19 years, almost 20 years
13 after the fact, it's probably difficult to recall specific
14 conversations and dates; but what I want instead is to think
15 about what your expectations are about what the defense should
16 be able to do to assist you with your defense.

17 So, as your understanding in your defense
18 attorney's capacity, what kinds of things did you expect that
19 Mr. Aldridge would have to be able to do to help you?

09:24:52AM

20 A. Well, initially what I would do would be to review all of
21 the Houston Police Department reports, any reports that were
22 out there, take notes from those; and then we would go over
23 and discuss that with the defendant, basically, letting him
24 know what type of evidence there was against him.

09:25:19AM

25 I would usually tell a defendant that he was at

1 liberty to tell me his side of the story if he wanted to; if
2 he didn't want to do that, he didn't have to; but that there
3 was an attorney/client privilege and he could speak to me
4 about that.

09:25:41AM 5 If I determined -- and, again, this was
6 something I did with all defendants. If I determined that
7 his -- that he did tell me what happened and that radically
8 changed, that I would inform the Court that we have a conflict
9 of interest without going into why; and I would ask to be
09:26:01AM 10 taken off the case.

11 Q. And that last one, can you -- I'm not quite sure how you
12 made --

13 A. Well, I'd ask to be -- I'd just say that we had a
14 conflict of interest. Because in my mind if a defendant is
09:26:16AM 15 about to -- is committing perjury, I've got a problem with
16 that. So, I would -- normally would have asked the judge to
17 be allowed to withdraw from the case without going into
18 specifics. We would listen to the defendant's side of the
19 story, decide what approach we wanted to take --

09:26:45AM 20 MR. RYTTING: Your Honor, I'd have to object to the
21 relevance. I would like to know what he did in this case,
22 rather than what he would do in cases in general.

23 THE COURT: Okay. You can ask him on cross.

24 A. And then we would decide on a strategy. I would explain
09:27:05AM 25 to a defendant about his right to testify or not. I would

1 give him my opinion as to whether I thought it was a good idea
2 for him to testify or not, and I would let a defendant know
3 that that was his choice as to what to do.

4 During the course of the trial, if certain
09:27:28AM 5 things came up, we probably would have questions for the
6 defendant, just to double-check as things arise during the
7 course of a trial. So, if there were any plea bargain offers,
8 those would be communicated to the defendant. I would have
9 given him my opinion as to what the pro's and con's were as
09:27:53AM 10 far as accepting or rejecting a plea agreement.

11 There was no plea agreement offered in this
12 case because if the prosecution had offered to, say, reduce it
13 to murder and give him a life sentence, I think I would have
14 recommended that Mr. Aldridge take that. But that was not
09:28:15AM 15 communicated to me. So, we had to go to trial.

16 Q. Okay. So, as far as being able to talk with Mr. Aldridge
17 about understanding his plea options, that wasn't something
18 that ever arose here?

19 A. It was not.

09:28:34AM 20 Q. Okay.

21 A. And, of course, I would have to explain to him about the
22 differences -- or what was required during the course of the
23 death penalty prosecution. There were certain questions that
24 had to be answered by the jury because the jury just doesn't
09:28:54AM 25 come in and say we give death or we give life. There are two

1 or sometimes three questions that -- at that time that the
2 jury had to answer; and if they answered all of them "yes,"
3 then that resulted in a death penalty.

09:29:18AM 4 Q. Based on your interaction with Mr. Aldridge and your
5 dealing with him, would he -- in your opinion, would he have
6 been able to understand the plea options, if you were
7 explaining it to him?

8 A. Yes.

09:29:33AM 9 MR. RYTTING: I have to object to the speculation in
10 that -- in this case. I believe the question was -- he has
11 already answered that -- already stated that there were no
12 plea bargains, and now she is asking him if you were to ask --
13 question him about a plea bargain, what would he say?

14 THE COURT: I don't think that was the question.

09:29:49AM 15 MR. RYTTING: Well, maybe she should rephrase the
16 question.

17 THE COURT: All right. Ask it again.

18 BY MS. HAYES:

09:29:59AM 19 Q. I'll do it in reverse order because I think the next
20 question will help tie it in a little bit better.

21 Were you aware that Dr. Quijano in his report
22 had stated that Mr. Aldridge was able to explain and
23 understood his plea options?

24 A. Yes.

09:30:11AM 25 Q. Now, regarding Mr. Aldridge's ability to testify, what --

1 as a defense attorney, what would you be explaining to a
2 defendant regarding his right?

3 A. Well, I would explain to him that the law was that if he
4 chose to testify, he could; that if he chose not to testify,
09:30:45AM 5 the jury would be instructed that they were not to hold that
6 against him in any way, that that was his right, and that the
7 judge would explain that to the jury.

8 Q. Now, in this case, Mr. Aldridge didn't testify at
9 guilt/innocence; but he did testify at punishment. So, did
09:31:08AM 10 there come a time, then, when you did have to explain to him
11 about his rights to testifying?

12 A. I know I probably explained it to him multiple times.

13 Q. If he had --

14 MR. RYTTING: Pardon me. Your Honor, I believe that
09:31:23AM 15 when he testified, it was in his statement in a *Jackson versus*
16 *Denno* hearing about the --

17 THE REPORTER: I'm sorry. Say that again.

18 MR. RYTTING: -- admissibility of his confession.

19 THE REPORTER: I believe that when he testified?

09:31:33AM 20 MR. RYTTING: He said that it was in a hearing that
21 was outside the presence of the jury, as I recall, and that
22 the issue was admissibility of his confession. So, it was --
23 the State was opening up a *Jackson versus Denno* hearing, in
24 which case you do not explain or need to explain the Fifth
09:31:53AM 25 Amendment right.

1 A. Well, I would have explained those in any case in the
2 guilt or innocence phase. You're right, in a *Jackson v. Denno*
3 hearing, I probably wouldn't have covered that; but I would
4 have covered his testimony as far as guilt or innocence or in
09:32:15AM 5 punishment to the jury later. I would have discussed that
6 with him.

7 MS. HAYES: I guess I will clarify. I wasn't
8 trying to mislead the Court. But it is in Volume 20 of the
9 punishment phase record. It is a short hearing that was
09:32:31AM 10 outside the presence of the jury, and it involved a challenge
11 to the admissibility of all the 1972 confessions. So, right,
12 it wasn't in front of the jury. And I was thinking there
13 might have been some warning there, as well.

14 THE COURT: All right.
09:32:46AM 15 BY MS. HAYES:

16 Q. If -- do you recall whether Mr. Aldridge wanted to
17 testify at guilt/innocence?

18 A. I don't recall; but if he had wanted to testify, I think
19 I stated earlier that he certainly had that right.

09:33:10AM 20 Q. If -- since the record -- since Mr. Aldridge did not
21 testify at guilt/innocence, can we -- can we make any
22 conclusion based on the fact that he doesn't testify at
23 guilt/innocence that -- I'm trying to see if you remember
24 whether he even wanted to testify or whether you may have
09:33:41AM 25 advised not to testify or there's -- after this long, do you

1 remember?

2 MR. RYTTING: Speculation, Your Honor.

3 THE COURT: I think he's going to say he doesn't
4 remember.

09:33:51AM 5 THE WITNESS: I think you're absolutely right.

6 A. I don't -- I don't remember.

7 BY MS. HAYES:

8 Q. As far as the defendant's ability to communicate
9 information to the counsel, could he communicate the pertinent
09:34:15AM 10 information about the crime?

11 A. Yes.

12 MR. RYTTING: Your Honor, this is leading; and I'll
13 object.

14 THE COURT: Sustained. Just rephrase it, please.

09:34:23AM 15 MS. HAYES: Okay.

16 BY MS. HAYES:

17 Q. How would you characterize the information that
18 Mr. Aldridge was able to inform you about the crime -- or the
19 facts of the crime?

09:34:37AM 20 A. I don't remember specifically --

21 MR. RYTTING: This has been asked and answered.

22 THE COURT: All right. I'm going to give her some
23 latitude.

24 A. I don't remember specifically what -- I know he said that
09:34:52AM 25 he was raped; and I imagine that we went over the facts of the

1 crime with him, how it occurred. I think I do recall that he
2 did admit, you know, shooting the complainant.

3 BY MS. HAYES:

09:35:20AM 4 Q. Do you remember if he admitted having bought a gun a few
5 days before the crime?

6 A. I -- I couldn't tell you. I don't remember.

7 Q. Do you remember whether you found out that he had
8 answered on the forms when he purchased the weapon that he was
9 not a felon?

09:35:32AM 10 A. Right. I knew from the forms that he had lied on that
11 form.

12 Q. Do you recall whether he actually told you that he had
13 shot the victim?

14 A. I don't recall specifically, but I'm sure he did.

09:35:54AM 15 Q. When you -- when you were able to talk with
16 Dr. Quijano -- or when you actually even had Dr. Quijano's
17 written report and he describes the version of the offense
18 that Mr. Aldridge related, do you recall whether that met --
19 whether that agreed with pretty much the story that y'all were
09:36:18AM 20 hearing?

21 A. I couldn't tell you. I would -- again, I would assume
22 that it likely did.

23 Q. When Mr. Aldridge was responding -- or when he was
24 answering questions, was it always the question that it was
09:36:49AM 25 going to be tied up with delusions or -- I mean, how would you

1 characterize how often delusions and other things interfered
2 with his communication?

3 A. I don't really remember. I know that he had, again,
4 these odd beliefs and odd writings and things like that. But
09:37:15AM 5 I think if I had thought that he was really delusional in
6 speaking to us, then I would have done something about it.

7 Q. From your recollection, did Mr. Aldridge have sufficient
8 memory to at least respond and answer some of the questions?

9 A. Yes.

09:37:47AM 10 Q. In dealing with Mr. Aldridge and explaining the role of
11 what defense needed to do to assist, would -- how do you
12 explain to him about the right to cross-examine witnesses? Is
13 that something you explained or something that you remember
14 explaining in this case?

09:38:18AM 15 A. I don't remember explaining that to him. I couldn't tell
16 you. I likely did, but I couldn't tell you.

17 Q. Can you recall any -- or -- or how was your ability --
18 your ability to cross-examine witnesses impacted or affected
19 at all as a result of Mr. Aldridge's mental illness?

09:38:44AM 20 A. Well, I don't think it would have had much affect mainly
21 because I knew the facts of the crime from the Houston Police
22 Department reports, the autopsy reports, those types of
23 things; and your ability to cross-examine would largely depend
24 on those, I think.

09:39:10AM 25 Q. Was it possible that -- in the course of investigating

1 this case, were you and Mr. Bates able to put together enough
2 of the facts to -- to have an understanding of what all took
3 place?

09:39:43AM 4 A. Oh, yeah. The police -- the HPD homicide detectives
5 are -- they're the best. I mean, they write tremendous
6 reports. They will write down everything that happens, good
7 or bad.

8 MR. RYTTING: I object to this line of testimony. I
9 don't believe that he has personal knowledge of how HPD does
09:40:03AM 10 this, and we're not talking about this particular case. We're
11 talking in generality.

12 THE COURT: All right. Overruled.

13 A. Well, I dealt with the Houston Police Department on a
14 regular basis for years; and I found that the homicide
09:40:23AM 15 detectives were extremely thorough. And it was -- you could
16 rely on their reports to have a pretty clear idea of what
17 happened.

18 BY MS. HAYES:

19 Q. So, would it be a fair characterization to say that even
09:40:46AM 20 if Mr. Aldridge had delusional beliefs, you could still get
21 to -- an understanding of the operative facts of the crime?

22 A. Yes. His belief, I think, that he was raped just defied
23 belief. I mean, it is a -- I guess anything is possible, but
24 that would have been extremely unlikely to have occurred. And
09:41:17AM 25 I just frankly didn't believe that it had occurred.

1 Q. Is the -- the crime itself here is actually murder during
2 the course of a robbery. So, how -- in that defense, do you
3 recall how he explained how the robbery fits in with the rape
4 delusion?

09:41:43AM 5 MR. RYTTING: This -- Your Honor, this has been
6 asked and answered.

7 THE COURT: Overruled.

8 A. I don't remember. But that would be something that would
9 take away, again, from the rape defense.

09:42:03AM 10 BY MS. HAYES:

11 Q. We're just talking about how -- about Mr. Aldridge being
12 able -- whether you explained about his rights or whether he
13 wanted to testify. Do you recall that -- that Mr. Aldridge
14 testified to challenge his 1972 confessions out of the
09:42:22AM 15 presence of the jury but he did that during punishment?

16 A. I didn't recall that. I'm assuming if it is in the
17 record, that it did occur.

18 Q. Do you recall -- do you recall at all -- I guess -- who
19 do you recall had the role between you and Mr. Bates of
09:42:44AM 20 challenging the 1972 convictions?

21 A. I'm sorry. I don't remember.

22 Q. Did there ever come a point where Mr. Aldridge decided
23 that he wanted to represent himself at trial? Do you recall
24 that?

09:43:00AM 25 A. Not that I recall.

1 Q. If Mr. Aldridge had informed you that he wanted to
2 represent himself, what steps would you take?

3 A. I would have to approach Judge Raines and let him know
4 about that and have the Court speak to him, speak to
09:43:24AM 5 Mr. Aldridge.

6 Q. If the record reflects that none of those steps were
7 taken, would it be fair to assume then that he did not ever
8 want to represent himself during the trial proceedings?

9 A. That would be fair.

09:43:42AM 10 Q. Thinking in terms of your defense, your ability to
11 present his case either at guilt/innocence or punishment, what
12 did the fact of his having a mental illness possibly prevent
13 you from being able to accomplish on behalf of his defense?

14 A. I think at least as far as the capital murder and the way
09:44:11AM 15 it happened, I don't know that that would have had any great
16 effect on the defense that we put forward. His -- I don't
17 know if this was his mental illness or not but just the fact
18 that he claimed that he was raped, I thought, was not
19 consistent with the facts and, therefore, I would have
09:44:45AM 20 recommended that he not testify. I guess in that sense there
21 may have been some effect that way.

22 Q. So, at this stage, thinking back about the presentation
23 of evidence and calling of witnesses, the only thing that you
24 would do on the defense -- I want to make sure I've got this
09:45:17AM 25 clear. Are you saying the only thing that you can think of

1 that might have been affected was just whether he testified or
2 not?

3 A. Likely. I would think that's probably a fair statement
4 to make.

09:45:36AM 5 Q. Mental illness aside, what's the likelihood that you are
6 going to recommend that he even testify at guilt/innocence
7 considering the State's case against him?

8 MR. RYTTING: Speculation.

9 THE COURT: Overruled.

09:45:50AM 10 A. Well, given his insistence about this rape, I just
11 thought that there was -- it just wasn't consistent with the
12 facts, and I would have recommended to any defendant that they
13 not testify. And something like that, I don't think the jury
14 would believe that at all; and I think it would have hurt --
09:46:14AM 15 hurt him worse to testify than it would not to.

16 BY MS. HAYES:

17 Q. Was Mr. Aldridge -- since he testified at least at
18 punishment, was he able to take the stand on relevant matters?

19 A. Apparently so. Again, I don't remember the specifics.

09:46:40AM 20 MR. RYTTING: I object to the leading, the relevant
21 matters in particular.

22 THE COURT: All right. Would you rephrase that
23 question?

24 BY MS. HAYES:

09:47:09AM 25 Q. Could you give your opinion on Mr. Aldridge's ability to

1 testify regarding the 1972 confessions?

2 A. I guess if we put him on the stand, we felt that he was
3 able to assist in that regard.

4 Q. Do you recall whether he was able to answer -- do you
09:47:42AM 5 recall what his defense was about the '72 confessions?

6 A. I think he said something about that the police had
7 beaten him up.

8 Q. In your dealing both as a prosecutor and as a defense
9 attorney, have you had occasions on few or many times to have
09:48:08AM 10 defendants who have raised that same sort of defense?

11 A. Many times.

12 Q. And how often in your -- in -- both as a prosecutor and
13 as a defense attorney, has the Court actually found that a
14 defendant was -- was actually beaten or that the confession
09:48:28AM 15 was involuntary?

16 A. Not very often.

17 Q. Do you recall whether Mr. Aldridge had any other kind of
18 condition or anything that might hinder his ability to
19 participate in his defense?

09:48:43AM 20 A. Nothing other than what I had mentioned earlier.

21 Q. Is there any chance that a continuance would have
22 improved the chances of him having an even more fair trial, or
23 was that something that -- was there a reason to delay the
24 trial?

09:49:04AM 25 A. Not that I was aware of, or I would have moved for a

1 continuance.

2 Q. Now, I believe -- maybe it was last Thursday -- you said
3 that the district attorney has an open file policy.

4 A. Yes.

09:49:29AM 5 Q. And it has an open file policy in this case.

6 A. Yes.

7 Q. Was it the policy then at the DA's office that you just
8 take notes, you don't get copies of documents?

9 A. That's what I recall. I know that was the policy when I
09:49:49AM 10 was there; and, yeah, that would have been the policy that we
11 didn't get copies of any police reports. We were allowed to
12 look at them all we wanted to. We could take notes, but you
13 couldn't take them with you or get copies of them.

14 Q. And I probably did ask this, but the police files that
09:50:14AM 15 you would see at the DA office would also include witness
16 statements; or would those be separate?

17 A. They would all be included in the police report.
18 Sometimes if they were, say, maybe a written sworn statement,
19 there would be a mention of that in the police report; and you
09:50:32AM 20 could actually look at the written sworn statement that would
21 be, you know, separate from the report itself.

22 Q. From your recollection in dealing with Mr. Aldridge, was
23 he able to understand the charges against him?

24 A. Yes.

09:50:52AM 25 Q. And how would you know that? How would you assess that?

1 A. Well, just through general conversation with him, I think
2 you can get a feel for whether somebody is picking up on what
3 you're saying or not.

4 Q. He was aware -- or did he grasp that he was actually in a
09:51:09AM 5 court of justice?

6 A. Yes.

7 Q. And that he was charged with a criminal offense?

8 A. Yes.

9 Q. And did he, in your opinion, understand the severity of
09:51:18AM 10 what he faced?

11 MR. RYTTING: This is leading, Your Honor.

12 THE COURT: Sustained.

13 BY MS. HAYES:

14 Q. How would you assess Mr. Aldridge's understanding of the
09:51:34AM 15 severity of the offense or the punishment that he faced?

16 A. He understood that he was facing a very serious offense
17 that might result in a death penalty.

18 Q. And --

19 MR. RYTTING: That's unresponsive. The question
09:51:53AM 20 was: How would you assess?

21 THE COURT: Read the answer back, please.

22 MR. RYTTING: We object to speculation. He can say
23 how he did assess, that would be, I think, relevant.

24 (The requested testimony was read back.)

09:52:21AM 25 THE COURT: All right. Overruled.

1 BY MS. HAYES:

2 Q. Earlier you had said that Mr. Aldridge had not -- there
3 wasn't overt hostility or anything, you felt, correct?

4 A. Correct.

09:52:44AM 5 Q. Was there ever a time that he tried to assault you or
6 Mr. Bates?

7 A. No.

8 Q. Do you recall how well or how he acted when he was in
9 jail awaiting trial?

09:53:00AM 10 A. You mean with us?

11 Q. How well did he get along with guards and maybe other
12 inmates and staff at the jail while he was awaiting trial?

13 A. That, I don't recall.

14 Q. Do you recall whether -- what kind of life Mr. Aldridge
09:53:23AM 15 was leading and what he was doing in life leading up to right
16 before the crime?

17 A. Well, I think, as I said the other day, he was -- had a
18 responsible job. He worked at a fast-food place. I don't
19 recall what the name of it was. And I believe he was living

09:53:45AM 20 on his own. Other than that, I don't recall anything too
21 much.

22 Q. Do you recall whether during the punishment phase -- the
23 kinds of testimony that y'all tried to present at punishment?

24 A. We were trying to present, as best we could, some
09:54:08AM 25 indicator of the mental illness that he suffered from in an

1 attempt to mitigate the punishment. That was our main focus
2 with the family and with the testimony of Randy Bates.

3 Again, I was hampered by the fact that I didn't
4 feel I could use Dr. Quijano to present that because of the
09:54:34AM 5 problem with the disciplinary records. So, I tried to do an
6 end run and present it in a different fashion. So, we
7 presented writings, testimony from Randy Bates about basically
8 sort of the odd beliefs that Mr. Aldridge had that were
9 reflected in the writings that he had and then to present
09:55:01AM 10 family members, as well, along the same lines.

11 Q. What is the -- what is your goal at punishment and in
12 portraying the defendant?

13 A. We were trying to portray him in a more -- somewhat more
14 sympathetic light, that he had a -- some mental problems that
09:55:24AM 15 perhaps the jury should consider and that possibly the jurors
16 might say: Well, this doesn't rise to the level of a
17 death-penalty type of situation that maybe perhaps they might
18 consider answering one of the questions "no" and give him a
19 life sentence. Obviously, it didn't work out that way.

09:55:53AM 20 Q. Now, when Randy Bates was questioned during punishment,
21 in Volume 20 of the record, there was questioning about
22 whether -- he was asked if Mr. Aldridge talked about spirits,
23 and he answered there's quite a bit of --
24 something like "quite a bit of talk about spirits."

09:56:12AM 25 A. Yeah.

1 Q. And the same with conspiracies. Can you describe what
2 Mr. Bates is talking about? Is quite a bit all the time? Is
3 it quite a bit of certain topics. Can you shed some sort of
4 light on what Mr. Bates means by quite a bit of talk about
09:56:35AM 5 spirits and conspiracies?

6 A. Well, it wouldn't have been all the time because we were
7 able to communicate with him; but his beliefs, I think, are
8 pretty well reflected in those writings that we presented to
9 the jury, as I recall.

09:56:58AM 10 Q. You said it was not all the time because you --

11 MR. RYTTING: This has been asked and answered.
12 Your Honor, this has been asked and answered. He answered
13 that question.

14 THE COURT: Your question is?

09:57:09AM 15 MS. HAYES: I was going to ask him more specifics
16 about what he means on this because, I mean, it sort of gets
17 down to the main part of Mr. Bates' testimony.

18 BY MS. HAYES:

19 Q. You had said not all the time because you could
09:57:24AM 20 communicate with him. Is it because -- I guess not -- I guess
21 I'm now asking: What does not all the time mean? Not -- I
22 mean, not all the time on a certain topic, not all the time
23 overall? I mean, what else can you shed light on about his --
24 your communication?

09:57:46AM 25 A. To be honest with you, I --

1 THE COURT: I am going to let him answer that.

2 Overruled.

3 A. I don't remember specifics of my communicating with him.

4 If there had been a serious problem where I thought that that

09:58:01AM 5 was affecting his overall thought process, I would have

6 brought that to the Court's attention. He had what I consider

7 to be odd beliefs that he did discuss at times.

8 Q. And also during Mr. Bates' questioning, it was asked

9 about -- I believe it is on the second cross-examination --

09:58:31AM 10 and when he responds that sometimes he was able to communicate

11 with Mr. Aldridge and sometimes not.

12 Does that sound consistent with your

13 remembrance of communicating with Mr. Aldridge?

14 A. Again, I don't remember any specifics about my

09:58:54AM 15 communication with Mr. Aldridge. I thought that

16 communications about his beliefs were pretty strange. I don't

17 know if you consider that really communicating with him other

18 than having him tell you about it. I didn't understand them.

19 Q. One of the questions before the Court is about the

09:59:21AM 20 assessment on the sanity. And would you explain what your

21 understanding is of what the -- what you're looking for to

22 decide if the defendant is insane or not?

23 A. Well, as I recall, if you are insane, that would mean

24 that you didn't know what you did was wrong, that -- say, for

09:59:45AM 25 instance, that I might walk up and shoot somebody in here and

1 kill them and think that I was justified in that when I
2 wasn't.

3 I didn't feel that the insanity defense was
4 there in any case because of the fact that he -- the way he
10:00:09AM 5 bought the gun, he lied about being a felon. That takes away
6 from not knowing what you are doing is wrong. The fact that
7 he robbed the complainant of a -- I think it was a fair amount
8 of money. I don't remember how much it was -- and, also, the
9 fact that he fled subsequent to killing the complainant, I
10:00:37AM 10 think, doesn't amount to -- or an insanity defense is just not
11 going to work based on those facts.

12 Q. Would you have been aware of those facts before you
13 requested Dr. Quijano's evaluation?

14 A. Yes.

10:00:51AM 15 Q. And so, the purpose of asking Dr. Quijano to still assess
16 sanity is for what reason?

17 A. Well, so we could have a professional opinion as to
18 whether or not he was insane or was incompetent. I felt that
19 was important, again, based on the fact that his beliefs were
10:01:24AM 20 very different; and I thought that he needed to be looked at
21 by a professional before we proceeded any further for the
22 trial.

23 MS. HAYES: If I can have one second.

24 (Pause)

10:02:30AM 25 BY MS. HAYES:

1 Q. Is there anything that I haven't asked you that you could
2 explain to help the Court get an understanding of -- a better
3 understanding of Mr. Aldridge of what you were dealing with?

4 A. No, I don't think so.

10:02:47AM 5 MS. HAYES: Pass the witness.

6 THE COURT: All right. Do you need to take a break
7 at this point?

8 MS. HAYES: That would be good.

9 MR. RYTTING: Yes, Your Honor.

10:02:53AM 10 THE COURT: All right. Let's take 15 minutes.

11 (Break)

12 THE COURT: All right. Are you ready for
13 cross-examination?

14 MR. RYTTING: Yes, Your Honor.

10:27:23AM 15 THE COURT: I didn't ask before we got started, but
16 I assume we are going to be finished today.

17 MR. RYTTING: I intend to be finished today.

18 THE COURT: I intend to be finished, too.

19 MS. HAYES: During the break I did talk to Ms. Oden
10:27:35AM 20 and she is on the ground and she should be in a cab on her way
21 here already.

22 THE COURT: All right.

23 MS. HAYES: So, it shouldn't be too much longer.

24 THE COURT: Okay.

10:27:42AM 25 All right. Mr. Rytting.

CROSS-EXAMINATION**BY MR. RYTTING:**

Q. Ms. Davis, you alluded to your experience as a DA in 1980 -- after 1987 with defendants that were mentally ill, correct?

A. Correct.

Q. But you weren't the one that was talking with those defendants or bringing the mental health problems to the attention of the Court, were you?

A. No, I was not.

Q. That was the defense attorney's job?

A. That's right.

Q. So, you didn't assess their mental status. You didn't --

A. No. I guess the only occasions I would have done something like that was if there was something that I saw in open court. But, no, generally not.

Q. And you don't recall any incident or any particular defendant in which you were called to make an assessment or did make an assessment in open court, do you?

A. No. Not in particular, no.

Q. You spoke about certain conversations that you believe you've had with Mr. Aldridge, for example, about the seriousness of the charge; is that correct?

A. Yeah. Again, I can't say specifically. But I know just in the general course of practicing law and doing business, I

1 would have discussed those things with him.

2 Q. You don't recall how you discussed it, the types of
3 questions you asked, correct?

4 A. No. Correct.

10:29:32AM 5 Q. So, you don't know if you just asked him a single yes or
6 no question, do you understand the nature of the charges
7 against you, do you -- and are they -- do you understand that
8 they're serious? Those may have been the type of questions
9 you asked him, correct?

10:29:44AM 10 A. Probably what I would have done was explained it and had
11 a give and take with him. I don't think I would have made it
12 a -- you know, like a one answer, yes or no type of thing. It
13 would just be a general sense in speaking to him and
14 discussing things with him as to whether or not he understood
10:30:02AM 15 it.

16 Q. You don't recollect how he responded in particular, do
17 you?

18 A. No, I don't.

19 Q. He may have just nodded his head, as far as you can
10:30:10AM 20 remember, correct?

21 A. Possibly.

22 Q. And you mentioned you thought Mr. Aldridge was a black
23 Muslim; is that right?

24 A. That was my understanding, yes.

10:30:28AM 25 Q. At some point during the course of your representation,

1 did it -- did you come to the conclusion that he was not a
2 black Muslim and did not have standard religious beliefs?

3 A. Well, to be honest with you, I don't really know what all
4 the beliefs of the black Muslim religion are. I know that he
10:30:48AM 5 had some Islamic-related beliefs and some other things thrown
6 in there. I guess it was sort of his own little personal
7 potpourri of religious beliefs.

8 MR. RYTTING: Your Honor, I have an exhibit. I'm
9 not sure what we are up to in the record. Mine goes up to 37,
10:31:18AM 10 but I think we are up in the 40s.

11 CASE MANAGER: 42.

12 MR. RYTTING: Okay. I will mark as Exhibit 42. I
13 have provided a copy to opposing counsel.

14 THE COURT: All right.

10:31:32AM 15 MR. RYTTING: The exhibit is a letter that was
16 introduced at trial during the punishment phase, written by
17 Mr. Aldridge and dated October 2nd, 1989, which would have
18 been approximately 10 months before trial.

19 THE COURT: Okay.

10:32:06AM 20 BY MR. RYTTING:

21 Q. You recall introducing several letters at trial of
22 Mr. Aldridge, correct?

23 A. We did.

24 Q. And one of them was -- I'm handing you what was marked at
10:32:22AM 25 trial as Defendant's Exhibit 2. Do you recall that letter?

1 A. I don't -- again, I don't specifically recall it; but I'm
2 sure that if we introduced it, I've read it.

3 Q. You believe you've read this letter previously?

4 A. I'm sure I must have.

10:33:17AM 5 Q. So, that would mean that you read this following passage
6 from this letter -- it starts, "Even though no physical person
7 has touched me sexually, I feel the pains of" --

8 MS. HAYES: What page?

9 THE COURT: What page are you on?

10:33:33AM 10 MR. RYTTING: This would be the second page -- or
11 the third page of this exhibit, Page 3, as numbered by
12 Mr. Aldridge.

13 BY MR. RYTTING:

14 Q. He goes on "...I feel the pains of anal or rectal entry.
10:33:51AM 15 Men and women molest me anally even with" -- it is difficult
16 to read, but it says "even with their eyes."

17 And it goes on to say even children molest him.
18 And it continues, "...and they molest me as they molested the
19 profits of Islam."

10:34:22AM 20 So, isn't it clear that that is not a -- an
21 expression of any religious belief that you are aware of,
22 correct?

23 A. As I said, I think he had his own personal beliefs; and I
24 guess he incorporated a number of different things in coming
10:34:43AM 25 to those.

1 THE COURT: Are you offering this exhibit,
2 Mr. Rytting?

3 MR. RYTTING: Yes, I am offering it.

4 THE COURT: Okay. Is there any objection?

10:34:52AM 5 MS. HAYES: No, Your Honor.

6 THE COURT: All right. Petitioner's 42 is admitted.

7 (Admitted)

8 BY MR. RYTTING:

9 Q. And he expressed beliefs similar to this throughout your
10 representation, did he not?

11 A. Yes, he did.

12 Q. Opposing counsel asked you if Mr. Aldridge was a
13 hindrance in your representation.

14 A. He was a what?

10:35:27AM 15 Q. Whether he hindered your representation in any way?

16 MS. HAYES: I object, Your Honor. I don't believe I
17 ever used "hinder."

18 MR. RYTTING: Okay. I'm sorry.

19 BY MR. RYTTING:

10:35:35AM 20 Q. I believe she asked you whether you could defend
21 Mr. Aldridge despite his mental illness.

22 A. Right.

23 Q. And you said that you could.

24 A. I believe so.

10:35:48AM 25 Q. And that -- right. And you were able to cross-examine

1 witnesses without his -- without interference or without
2 problems caused by his mental illness; is that correct?

3 A. As best I recall, I think we were able to do that.

4 Q. In fact, you didn't rely on him at all when it came to
10:36:07AM 5 cross-examining witnesses or need to, did you?

6 A. You know, frankly, I don't recall if we discussed that
7 with him or not. Chances are -- I mean, I think I could
8 conduct a cross-examination without his input; but we may have
9 gotten some input from him. I just don't remember.

10:36:29AM 10 Q. And you were cross-examining his own family members,
11 correct?

12 A. That's correct.

13 Q. People that ordinarily affected --

14 A. Well, I wasn't cross-examining them. I think I put them
10:36:39AM 15 on myself.

16 Q. And during the guilt/innocence, did the State call
17 several of his family members?

18 A. I don't remember if they did. I know we put some on in
19 punishment to try to show some mental disabilities, but I
10:36:56AM 20 don't remember if the State put them on or not.

21 Q. You don't recall that the State -- if the record reflects
22 they called James Anthony Aldridge, for example, to testify,
23 you wouldn't disagree with that if --

24 A. Well, I wouldn't -- obviously I wouldn't argue with that,
10:37:08AM 25 no.

1 Q. And ordinarily the defense would know something about his
2 family members, and you could rely on him heavily to
3 cross-examine them. Isn't that fair to say?

4 A. It's possible, depending on what was said. Again, I'm
10:37:25AM 5 not saying that we didn't rely on him to some extent. I just
6 don't recall.

7 Q. But all you do recall is his expression of odd beliefs
8 and the defense of being raped by the victim, correct?

9 A. Pretty much.

10:37:46AM 10 Q. Now, I believe you stated on direct examination that if
11 you thought you were -- that Mr. Aldridge was delusional
12 during trial, you would have done something about it, correct?

13 A. Well, yeah, I think I did. I got a psychiatrist. That
14 was my concern. And then once the psychiatrist indicated that
10:38:14AM 15 he appeared to be competent and sane, I didn't notice any
16 major changes after that. If I had, I would have taken some
17 action.

18 Q. Did you think he was delusional during trial?

19 A. I don't know if you would call them delusions. It's just
10:38:30AM 20 those beliefs that he has, like those that are reflected in
21 the -- in those writings that he had. That was pretty much
22 what it was. In my mind -- I don't know. I guess you could
23 look at those as delusions. I mean, there are other religions
24 out there that are established religions that I think are --
10:38:50AM 25 have some mighty odd beliefs.

1 Q. But you didn't know if he was delusional or not during
2 the trial or whether --

3 A. Well, that's why I got the psychiatrist.

4 Q. I'm talking about during the trial. You got a
10:39:03AM 5 psychiatrist to interview, did you not, on March 29th, 1990.
6 Didn't we establish that?

7 A. Right. And as I said, there was no major change in
8 Mr. Aldridge that I observed subsequent to that.

9 Q. And do you realize that Mr. Quijano -- well, did you ask
10:39:18AM 10 Dr. Quijano -- I assume you did not ask Dr. Quijano at the
11 time of trial whether your client was delusional, did you?

12 A. I relied on what Dr. Quijano told me in his report, and
13 that was -- you know, I don't know what else to tell you.

14 Q. Do you realize that Dr. Quijano has testified that
10:39:43AM 15 Mr. Aldridge suffers from affixed -- from a disease that
16 results in a fixed delusional system that persisted through
17 trial?

18 A. I was not aware of that.

19 Q. You said that you -- you were praising the HPD reports,
10:41:10AM 20 correct?

21 A. Right. And, again, I don't remember them specifically.
22 But, yeah, HPD homicide detectives do -- they do and -- or did
23 a good job.

24 Q. And you understand that, as a defense attorney and a
10:41:25AM 25 former DA, that those reports aren't allowed into evidence,

1 correct?

2 A. I know that.

3 Q. Because they're hearsay reports, correct? That's the
4 objection, they're hearsay, isn't it?

10:41:38AM 5 A. Yes.

6 Q. And as such they are unreliable. The statements in there
7 haven't been tested by cross-examination; is that correct?

8 A. That's correct.

9 Q. That's the argument that is made?

10:41:47AM 10 A. That's correct.

11 Q. So, they are routinely left kept out?

12 A. Right.

13 Q. And as a defense attorney, you would try to keep those
14 reports out?

10:41:53AM 15 A. Certainly.

16 Q. But this is the evidence that you relied on to get the
17 facts of the case?

18 A. Right. Because the HPD homicide detectives do a good job
19 of marshaling the evidence in a case, taking witness

10:42:08AM 20 statements. I find them to be pretty reliable. But for
21 purposes of court, obviously, like you say, they are subject
22 to cross-examination; and you can use those reports in your
23 cross-examination.

24 Q. As opposed to Mr. Aldridge, who was not reliable,

10:42:24AM 25 correct?

1 A. I didn't think -- well, no, he wasn't. He was -- there
2 are lots of defendants who tell stories that are not
3 believable. This was another story that was not believable.

4 Q. And, again, you said that -- as you described it,
10:42:50AM 5 Mr. Aldridge is on an even keel, correct? That was the word
6 you used, "even keel."

7 A. Well, I mean, given his situation, there wasn't any big
8 change from the first time I met him through the end. There
9 was -- you know, when Dr. Quijano interviewed him after that,
10:43:10AM 10 there wasn't any major change in him, other than what I've
11 already described, the symptoms that he had. That didn't
12 change either.

13 Q. His beliefs didn't change over the course of your
14 representation, correct?

10:43:23AM 15 A. Not -- not that I was aware of, no.

16 Q. And his -- the way that he interacted with Mr. Bates and
17 yourself, it didn't change over the course of your
18 representation, did it?

19 A. No. Not in a major way, no.

10:43:34AM 20 Q. And so, when Mr. Bates testified that Mr. -- that the
21 conversations with Mr. Aldridge were irrational --

22 A. Yeah. I mean, let's look at the writings that he has.
23 To me, those are somewhat irrational, in my mind.

24 Q. That reflects the way he was throughout your
10:43:55AM 25 representation; is that correct?

1 A. Yes.

2 Q. And so, just to clarify, you believe that when
3 Randy Bates took the stand, he was testifying truthfully,
4 correct?

10:44:43AM 5 A. Yes.

6 Q. And you trusted his judgment, correct?

7 A. Yes.

8 MR. RYTTING: I'll pass the witness, Your Honor.

9 THE COURT: All right. Thank you, sir.

10:44:56AM 10 Any redirect?

11 MS. HAYES: Yes, Your Honor.

12 **REDIRECT EXAMINATION**

13 **BY MS. HAYES:**

14 Q. You were asked about Mr. Aldridge's belief about being
10:45:12AM 15 molested by a child, if you'll refer to that newest
16 plaintiff's exhibit where they read the passage. And I
17 believe your response was that he had his own personal
18 potpourri of religious beliefs?

19 A. Yes.

10:45:28AM 20 Q. Would you explain what you mean?

21 A. Well, it just seemed to be kind of a mishmash of
22 different beliefs, interspersed with, I guess, some of his own
23 personal beliefs.

24 Q. And if some of those beliefs, like being molested by a
10:45:47AM 25 child is wrong, does that somehow mean that he is not actually

1 a Muslim or consider himself a Muslim?

2 A. I wouldn't think so.

3 Q. But could his -- do you know whether -- that he had
4 converted to becoming a Muslim when he was in prison

10:46:10AM 5 originally for all the robberies?

6 A. I couldn't remember. I know I did have it in my mind
7 that he was a Muslim.

8 MR. RYTTING: Objection -- hang on a minute.

9 THE WITNESS: I'm sorry.

10:46:18AM 10 MR. RYTTING: Just the question -- the relevance of
11 this line of questioning.

12 THE COURT: I'm going to allow it. Overruled.

13 A. I know I had it in my mind that he was a black Muslim.
14 I'm not sure where I got that, but that was in my mind. I
10:46:42AM 15 probably heard it or saw it somewhere.

16 BY MS. HAYES:

17 Q. So, could part of his -- the training or what he learned
18 about the Muslim faith, since he is learning and converting in
19 prison, could it be somewhat colored by the instruction

10:46:54AM 20 from --

21 MR. RYTTING: Objection, leading.

22 THE COURT: Let her finish the question.

23 BY MS. HAYES:

24 Q. -- couldn't it be somewhat colored by the fact that he's
10:47:03AM 25 learning and converting about that from a prison group?

1 MR. RYTTING: Objection, leading, Your Honor.

2 THE COURT: All right. I'm going to sustain it.

3 BY MS. HAYES:

10:47:25AM 4 Q. You were asked whether you -- you didn't rely at all on
5 the defendant in cross-examining witnesses. You agreed with
6 that statement that you didn't rely on him when you were
7 figuring out your cross-examination?

8 A. No, I don't agree with that. The chances are -- and,
9 again, I don't have a memory of it; but I'm sure we consulted
10:47:41AM 10 with him. I don't know to what extent we used it. I just
11 don't remember.

12 Q. If the defendant -- if you present the defendant at
13 punishment to challenge the 1972 confessions, would it be fair
14 to say that you relied on him for some of the information
10:48:05AM 15 about challenging the 1972 confessions?

16 A. Yes, we would have had to.

17 Q. You were asked about whether the State had called family
18 members to testify. There's some comment about whether you
19 had crossed family members and whether you would have relied
10:48:19AM 20 on Mr. Aldridge for information about the family. The family
21 members --

22 MS. HAYES: For the record, Your Honor, James
23 Anthony Thomas and Anthony Aldridge are two of the nephews
24 that testified at guilt/innocence.

25 BY MS. HAYES:

1 Q. So, if -- is it James Anthony -- or James and Anthony are
2 two of the family members that helped Mr. Aldridge and they
3 were involved in his whereabouts immediately after the crime,
4 which is represented at guilt/innocence. If those are the
10:48:51AM 5 witnesses that you are having to testify, are you having to
6 rely -- or having to question, are you relying on Mr. Aldridge
7 to give you the details about the crime; or what else were you
8 relying on to be able to question those witnesses?

9 THE COURT: If you remember.

10:49:05AM 10 A. Again, I don't remember a particular conversation I had
11 with him. I suspect we would have asked him, you know, if
12 there was anything about the family members, if there was an
13 ax to grind or a little bit about the family member --

14 MR. RYTTING: Your Honor, I will object and move to
10:49:20AM 15 strike since he said he doesn't remember.

16 THE COURT: I think we'll go with he doesn't
17 remember.

18 THE WITNESS: All right, sir.

19 THE COURT: All right. Sustained.

10:49:27AM 20 BY MS. HAYES:

21 Q. You have testified previously that your review of all the
22 HPD records included the police statements; is that correct?

23 A. Yes.

24 Q. Okay. And if statements were in there from James and
10:49:38AM 25 from Anthony, then you would have had an opportunity to review

1 those for details about what their version after the crime
2 was?

3 A. Yes.

4 Q. You were asked about whether you inquired of Dr. Quijano
10:50:03AM 5 whether the defendant was delusional at trial. Is it also
6 true that what Dr. Quijano reports in his descriptions about
7 the delusions and all the things that Aldridge purports are
8 basically what y'all saw, as well, when you were dealing with
9 Mr. Aldridge?

10:50:21AM 10 A. Yes.

11 Q. From your recollections of dealing with Mr. Aldridge,
12 though, was that how it was all the time, on all the topics?

13 MR. RYTTING: Asked and answered, Your Honor.

14 THE COURT: Sustained. I agree.

10:50:41AM 15 BY MS. HAYES:

16 Q. Some of the questioning involved about your -- that your
17 conversations about Mr. Bates' testimony, talking about the
18 conversations being irrational, and that reflected how your
19 interactions were with the defendant?

10:51:14AM 20 A. That would be correct.

21 Q. When he was describing all the events and the details,
22 that was when he was giving his version of the crime, correct?

23 A. Yes.

24 MR. RYTTING: I will have to object to asking
10:51:33AM 25 about -- what was it -- the events and details. I don't see

1 any recollection of that.

2 THE COURT: Are we talking about Mr. Bates'
3 testimony?

4 MS. HAYES: I'm talking about when Mr. Aldridge has
10:51:47AM 5 related the facts of the crime and the events and things that
6 occurred.

7 MR. RYTTING: I will object. He stated he doesn't
8 remember anything about the fact -- what he was saying in
9 particular about the facts of the crime and events that
10:51:59AM 10 occurred, other than that he said he was raped and sexually
11 assaulted. Asked and answered.

12 THE COURT: All right. I'm not clear on the
13 question. Would you ask the question one more time?

14 MS. HAYES: I will ask it a different way.

10:52:09AM 15 THE COURT: Okay. That would be good.

16 BY MS. HAYES:

17 Q. You've testified that Mr. Aldridge -- that you remember
18 Mr. Aldridge talking about the rape and about the rape
19 being -- you know, he explains that was what was going on when
10:52:21AM 20 the crime happened.

21 Would you agree that that's -- did he explain
22 what his motive is or what his reasoning was going into the
23 crime?

24 A. That was his explanation.

10:52:35AM 25 Q. Okay. And that's -- and that's separate from the facts

1 of him being able to report whether he buys a gun --

2 MR. RYTTING: I object --

3 BY MS. HAYES:

4 Q. -- or whether he shoots the victim or whether his --

10:52:49AM 5 as -- I'm trying to see if you agree that there's a difference
6 between him saying the why in doing it and the what he did?

7 MR. RYTTING: I will object on the basis of leading
8 and on the fact that this has been asked and answered several
9 times about what he specifically said -- or what he remembers

10:53:07AM 10 he specifically said.

11 THE COURT: All right. Sustained on both grounds.

12 MS. HAYES: Nothing further.

13 THE COURT: Okay. Thank you.

14 Any recross?

10:53:20AM 15 MR. RYTTING: Nothing further, Your Honor.

16 THE COURT: All right. Thank you.

17 You may step down, Mr. Davis. Thank you.

18 THE WITNESS: Thank you.

19 (Witness released)

10:53:26AM 20 THE COURT: All right. Are we ready to take up the
21 cross-examination of Dr. Mosnik?

22 MS. ODEN: Judge, if I could have just two minutes
23 to consult with co-counsel --

24 THE COURT: Sure.

25 MS. ODEN: -- to see if there's anything she needs

1 me to handle.

2 (Pause)

3 THE COURT: All right. Dr. Mosnik, come up and
4 resume the witness stand and remember that you are still under
10:54:25AM 5 oath.

6 (DIANE MOSNIK, M.D., witness, previously sworn)

7 CROSS-EXAMINATION (CONTINUED)

8 BY MS. ODEN:

9 Q. Good morning, Dr. Mosnik.

10:54:33AM 10 A. Good morning.

11 Q. Now, I think perhaps that one or two of the questions
12 that I have for you might be repetitive from the other day;
13 but I just want to make sure we are on the same page about a
14 few things. You would consider yourself to be a scientist; is
10:54:51AM 15 that right?

16 A. I would, yes.

17 Q. And so, what you seek to do is to accumulate data and
18 test a hypothesis before you come to a conclusion; is that
19 right?

10:55:03AM 20 A. Yes. That is correct.

21 Q. Do you follow the scientific method, then, in coming to
22 conclusions?

23 A. I do.

24 Q. And do you feel that you did that in this case?

10:55:10AM 25 A. I do, yes.

1 Q. Okay. So, what was the hypotheses -- what were the
2 hypotheses you were testing?

3 A. As to whether or not the patient had schizophrenia and on
4 whether or not he was competent to stand trial.

10:55:23AM 5 Q. Those were the two hypotheses you were testing?

6 A. Those were the two main ones, two of the main ones, yes.

7 Q. Okay. Go ahead and tell us all of the hypotheses you
8 were testing to come up with your opinion in this case.

9 A. Okay. So, whether or not the patient had a diagnosis of
10:55:39AM 10 schizophrenia; then if he did, what his symptoms were; the
11 severity and nature of those symptoms.

12 Q. Okay. Let me stop you for a second. A hypothesis would
13 be something like this person has schizophrenia or this person
14 was not competent to stand trial in 1990.

15 A. Right.

16 Q. So, something like what are his symptoms is not a
17 hypothesis.

18 A. It is in the nature of a schizophrenia patient who
19 presents with a number of different symptoms. So, different
10:56:07AM 20 type of symptoms, different severity of symptoms. The
21 question is whether or not he had delusions.

22 Q. Okay. So --

23 A. If he did have, how severe were those delusions, were
24 they severe, were they not severe.

25 Q. Okay.

1 A. Those were all relevant to determining whether or not
2 they had an impact on his competency.

3 Q. Okay. So, maybe we are not talking about the same thing
4 when we say "testing a hypothesis." When I say "testing a
10:56:27AM 5 hypothesis," your hypothesis would have been he has
6 schizophrenia and he has severe delusions of the type that
7 would impair his competency back in 1990. Is that fair to
8 say?

9 A. I'm not sure what you mean by "We're not testing the same
10:56:43AM 10 hypothesis."

11 Q. Well, actually what I said was we are not talking about
12 the same thing when we say we are testing a hypothesis. If I
13 understand correctly, what you mean by testing a hypothesis is
14 answering an open-ended question, not coming up with --

10:56:55AM 15 A. It's not an open question. It's whether or not it
16 exists.

17 Q. Okay. So, go ahead and tell us the rest of the
18 hypotheses you were testing.

19 A. And then whether or not the person -- the symptoms that
10:57:09AM 20 the person has affect their ability to engage in a rational
21 discussion with their attorneys. And then --

22 Q. At what point in time?

23 A. I did two points in time; one at the current time that I
24 did my assessment and then based on the evidence in the record
10:57:27AM 25 that I had available to me, whether or not that influenced his

1 ability at the time of the original trial in 1990.

2 Q. Okay. And were there any other hypotheses that you
3 tested?

4 A. I'm sure there were.

10:57:41AM 5 Q. Maybe dealing with insanity at the time of the crime?

6 A. The other questions posed to me, yes; whether or not he
7 was competent to be executed, whether he was sane at the time
8 of the trial. That's correct.

9 Q. Okay. And, generally, as a scientist, you would look for
10:57:58AM 10 the explanation that accounts for the facts or the data that
11 you observe most accurately; is that right?

12 A. Say that again.

13 Q. As a scientist, when you are coming to a conclusion, the
14 conclusion that you draw is the answer or the explanation that
10:58:20AM 15 ties together all the data in the most accurate way; is that
16 correct?

17 THE COURT: Just a minute, Doctor.

18 Do you have an objection?

19 MR. RYTTING: Your Honor, I would object to the
10:58:27AM 20 relevancy of this line of questioning. It sounds like it is
21 something like a 702 objection, but I can't see where it is
22 going.

23 THE COURT: Relevance?

24 MS. ODEN: I will tie it together, Judge. It's not
10:58:43AM 25 a 702 objection.

1 THE COURT: I will give her some latitude.

2 Overruled.

3 A. Okay. I'm sorry. You're going to have to repeat that.

4 BY MS. ODEN:

10:58:48AM 5 Q. Okay. So, my question to you is: As a scientist, when
6 you are coming to a conclusion, are you looking for an
7 explanation for the data that you observe that accounts for
8 all the data in the most accurate way possible?

9 A. Am I looking for an explanation? So, I'm not looking for
10:59:11AM 10 an explanation. I am looking for data that supports or
11 refutes my hypothesis that the patient has schizophrenia.

12 Q. Okay.

13 A. So, I look for evidence for and against that --

14 Q. Okay.

10:59:21AM 15 A. -- and whether or not it fits with all the knowledge that
16 I have about schizophrenia.

17 Q. Okay. And, likewise, you would be looking for data that
18 supports or refutes your hypothesis that he was not competent
19 at the time of trial?

10:59:34AM 20 A. That's correct.

21 Q. Okay. And at some point, if you have enough data on one
22 side or the other of the line, that tells you which conclusion
23 to draw?

24 A. Yes.

10:59:43AM 25 Q. And you are looking for a conclusion that accounts --

1 that makes use of that data accurately; is that right?

2 A. I'm coming to a conclusion about that.

3 Q. Okay.

4 A. I'm not looking for a conclusion. I'm coming to a
11:00:01AM 5 conclusion based on the data.

6 Q. Okay. And you would look for inconsistencies in the data
7 that might affect the conclusion you draw. You are paying
8 attention to the inconsistencies, if there are any; and those
9 affect the conclusions that you draw.

11:00:18AM 10 A. I look for data that both supports and refutes my
11 hypothesis, yes.

12 Q. And just one more time. You did not review the Houston
13 Police Department file at any point in preparing to either
14 form an opinion for your report or preparing to testify in
11:00:34AM 15 this hearing?

16 A. That is correct. I did not.

17 Q. Have you reviewed it since our last conversation last
18 week?

19 A. No. Only you showing it to me on the stand.

11:00:44AM 20 Q. Okay. Did the attorneys make that available to you to
21 potentially review, or have you chose not to review?

22 A. That is not something that I review in coming to my
23 conclusions.

24 Q. Okay. You mention that you were not able to reach

11:00:57AM 25 Mr. Davis in person for an interview. Did you ever speak to

1 him over the phone regarding his actions in this case before
2 you performed your conclusions?

3 A. I attempted to, yes. We had a meeting scheduled that I
4 showed up for and waited in his office for an hour and a half.

11:01:12AM 5 Q. I understand that. My question is: Did you speak to him
6 on the phone?

7 A. I did speak to him on the phone, and he told me
8 repeatedly that he doesn't remember anything and would not
9 have an opportunity to meet with me again.

11:01:21AM 10 Q. Okay. How about Mr. Bates?

11 A. I did not.

12 Q. Did you try to make an appointment with him?

13 A. I did not.

14 Q. Did you speak with him on the phone?

11:01:28AM 15 A. Not that I recall, no.

16 Q. Any particular reason?

17 A. Not that I recall.

18 Q. Would that have been helpful information for you?

19 A. It certainly would have.

11:01:39AM 20 Q. But you don't remember why you chose not to pursue that?

21 A. I don't know if I did or not, no. I only remember the
22 meeting with Mr. Bates because -- excuse me -- Mr. Davis
23 because I sat in his office for an hour and a half.

24 Q. Uh-huh. And did you review James and Anthony's testimony
11:01:57AM 25 at guilt/innocence in forming your opinion?

1 A. I did, yes.

2 Q. And how about Virginia's testimony at trial?

3 A. I did, yes.

4 Q. And when you were asking Mr. Aldridge questions about
11:02:09AM 5 competency, if I understand correctly, the three basic
6 questions or areas that you asked him about were: Who are his
7 attorneys, at the very beginning of the session?

8 A. Yeah.

9 Q. What is his understanding of the current legal
11:02:22AM 10 proceedings?

11 A. Uh-huh.

12 Q. And who, if anyone, was on his side?

13 A. No. I asked the initial question about the attorney.
14 Then I asked three additional questions during my interview
11:02:34AM 15 that I stated to you yesterday -- excuse me -- on Friday.

16 Q. Okay. So, that's why I'm asking you again because I
17 obviously got it wrong.

18 A. But you said -- right.

19 Q. If you will correct me, please. What were the three
11:02:43AM 20 questions that you asked?

21 A. I asked initially during the consent process as I was
22 telling him about what the intent of my interview and the
23 proceedings would be, about knowledge of his attorneys. I
24 asked him, then, during the interview portion of my
11:03:00AM 25 evaluation, what his understanding of the legal proceedings

1 against him currently were, about the adversarial nature of
2 the proceedings, and if he understood the nature of the
3 charges against him.

4 Q. Who was in control of that interview? Would you describe
11:03:29AM 5 yourself as being in control of the interview, directing the
6 questions and directing his answers; or would you say
7 Mr. Aldridge was more in control of that interview?

8 A. I would say that neither one of us was in control of the
9 interview. I asked questions. He responded. He also asked
11:03:44AM 10 some questions of me.

11 Q. What questions did he ask of you?

12 A. He asked questions about what my role was, what kind of
13 testing we would be doing, that sort of thing.

14 Q. And what did you tell him your role was?

11:03:59AM 15 A. That I was hired by his defense attorney to provide
16 information about whether or not he had a diagnosis of a
17 mental illness, whether or not that diagnosis contributed to
18 his ability to be competent to understand the proceedings
19 against him and his participation in the trial.

11:04:20AM 20 Q. In the trial in 1990?

21 A. That's correct.

22 Q. And how did he respond to you?

23 A. He was happy to do the cognitive testing because it
24 would -- he felt that it would show how intelligent he was.
11:04:33AM 25 He was interested to participate in the testing to do the

1 cognitive tasks.

2 Q. And what did he tell you about his attorneys' role in
3 this proceeding? Did he believe that they were his attorneys?

4 A. No. He believed that they had been recused, that he
11:04:53AM 5 had -- said that they were no longer active on his case.

6 Q. And did it appear to you that Mr. Aldridge was
7 understanding your role and the current legal proceedings and
8 the reasons for the testing?

9 A. No. He assumed his own understanding of the testing;
11:05:14AM 10 that I was there, in fact, to help him promote his view of
11 what was going on in the case and that I was there to
12 demonstrate to everybody these spirits, if you will, that were
13 communicating with him and his belief. He saw me as an avenue
14 to get that presented to the Court. So, he chose to see me
11:05:36AM 15 despite the fact that I was working for his attorney.

16 Q. Why did you have him sign a consent form, then?

17 A. As a matter of form, that is what we are required to do.

18 Q. Even if you believe -- I assume that the consent is not
19 valid. Or did you believe that it was a valid consent?

11:05:54AM 20 A. I believed that he had a confused understanding of what
21 the procedures were, yes. So, in that sense, no, it is not a
22 valid consent.

23 Q. You understand that -- do I understand correctly that he
24 did not understand your question about the adversarial nature
11:06:13AM 25 of this proceeding in the sense that he thought everyone was

1 against him?

2 A. That is correct.

3 Q. Do you find that that is consistent with his willingness
4 to cooperate with you but his unwillingness to cooperate with
11:06:25AM 5 our expert?

6 A. Say that again.

7 Q. Do you believe that his opinion that everyone in this
8 proceeding is against him is consistent with his willingness
9 to cooperate with you, yet his unwillingness to cooperate with
11:06:44AM 10 our expert?

11 A. Would that be consistent with his understanding of the
12 adversarial nature?

13 Q. Would that be consistent with his belief that everyone is
14 against him?

11:06:58AM 15 A. Well, he didn't believe that I was against him. He --

16 Q. Okay. So, he believed you were the only person that was
17 not against him?

18 A. No. He -- at times he felt that people were for him,
19 some of his attorneys; and then eventually they become someone
11:07:13AM 20 that turns against him.

21 Q. Don't you find it inconsistent that on one hand he thinks
22 in this proceeding both sides -- the Attorney General's
23 Office, the respondent, and the petitioner's attorneys -- are
24 against him; and, yet, he is willing to cooperate with the
11:07:33AM 25 petitioner's expert and unwilling to cooperate with the

1 respondent's expert?

2 A. I'm not sure what the circumstances were at the time that
3 he refused to see your person. It may have had something to
4 do with the fact that I was a woman. I don't know.

11:07:47AM 5 Q. There are two aspects of competency that we're looking
6 at, understanding the proceedings and the ability to assist
7 counsel.

8 Do you think that understanding the nature of
9 federal habeas proceedings is the same level of understanding
10 required to understand a trial?

11 A. I think that understanding the nature of habeas
12 proceedings certainly indicates some level of understanding.
13 Whether it is at the same level as a trial, that I couldn't
14 speak to.

11:08:24AM 15 Q. Does Mr. Aldridge -- in general would a person need to
16 have legal training in order to compensate to meet that
17 standard of understanding the legal proceedings against them?

18 A. State that again, please.

19 Q. Does a person who is being evaluated for competency need
11:08:42AM 20 to have some level of legal training in order to be able to
21 adequately understand the legal proceedings against them?

22 A. No. I don't believe that they have to have some legal
23 training.

24 Q. Okay. And I'm kind of backtracking a little bit here.
11:08:59AM 25 In your prior experience evaluating people in the criminal

1 justice system, none of those evaluations were for sanity; is
2 that right?

3 A. Yes. That is correct.

4 Q. And of those evaluations, which ones were pro se inmates?

11:09:17AM 5 A. I don't remember the details of any of the previous
6 evaluations.

7 Q. You don't remember James Colburn or Marcus Green?

8 A. I remember the names and some basic things, but I don't
9 remember any of the details at this point. No, I have not
11:09:33AM 10 reviewed of any of them.

11 Q. Okay. Weren't you both -- in both of those cases
12 assisting their attorneys, providing a report to attorneys
13 that were representing those inmates?

14 A. Yes.

11:09:45AM 15 Q. Okay. And Andrea Yates obviously had counsel because you
16 were providing assistance to an expert who was providing a
17 report to her counsel. Have you ever been assisting a pro se
18 inmate, pro se meaning an inmate who does not believe they
19 have counsel or does not have counsel?

11:10:05AM 20 MR. RYTTING: Your Honor, I object to the relevancy
21 of this line of questioning.

22 THE COURT: I am going to allow it. Overruled.

23 A. I'm sorry. State it again.

24 BY MS. ODEN:

11:10:14AM 25 Q. Have you ever been in contact with a pro se inmate, an

1 inmate who is not represented by an attorney?

2 A. No. I mean, the closest thing is Mr. Aldridge, who
3 doesn't believe that he has an attorney.

4 Q. How much emphasis did you place on Mr. Aldridge's answers
11:10:39AM 5 to the same kinds of competency questions that he made in
6 1990?

7 A. I'm sorry. The same kinds?

8 Q. Yes. The questions about the nature of the proceedings
9 and his understanding of the charges against him and the roles
11:10:52AM 10 of the different players in the trial?

11 A. Same kind as what? What are you comparing that to?

12 Q. How much emphasis did you place on Mr. Aldridge's answers
13 to competency evaluation questions that he gave in 1990 when
14 you were forming your opinion?

11:11:08AM 15 A. I did place weight on those.

16 Q. How much weight?

17 A. I don't know that I can say how much weight. I did
18 review those and did place weight on that and felt that he did
19 not express a clear understanding of those factual
11:11:24AM 20 understandings of legal proceedings that Dr. Quijano reported.

21 Are you talking about what is in Dr. Quijano's report?

22 Q. Yes.

23 A. Yes.

24 MR. RYTTING: Could I ask her for some
11:11:36AM 25 clarification, what part of the report? And maybe show the

1 witness what you are talking about.

2 MS. ODEN: I don't think I need to. She already
3 answered the question.

4 THE COURT: And you can ask her on cross.

11:11:45AM 5 BY MS. ODEN:

6 Q. Are you aware that -- okay. Let me back up.

7 The reason that Mr. Aldridge told you he killed
8 his manager, Ben Stone, was that Ben Stone was -- had been
9 sexually assaulting him; is that right?

11:12:01AM 10 A. That wasn't the specific reason, no. That was
11 intertwined in part of it, yes.

12 Q. Right. There was a voice in his ear. There was a man on
13 the roof; and the voice was telling him that if he didn't kill
14 that person, the sexual assault would continue. Is that
11:12:16AM 15 right?

16 A. Right. He wasn't the only one that was molesting him.
17 There were numerous people that were molesting him and Nazis
18 and police and people from the prison were all intertwined in
19 that. So, it was pretty in-depth in terms of the

11:12:31AM 20 hallucinations and delusional belief. But, yes, that was a
21 piece of it.

22 Q. Okay. So, I guess, then, the fact that there was a
23 last-minute, night before the offense, shift change so that
24 the manager that was supposed to be at work that morning was
11:12:45AM 25 not there wouldn't have made any difference because

1 Mr. Aldridge was imagining that all the managers were sexually
2 assaulting him then?

3 A. It wasn't just Ben Stone. That's correct. There were a
4 number of people involved in his delusion beliefs.

11:13:00AM 5 Q. Okay. Actually, if Mr. Aldridge was thinking it was his
6 manager that was going to be on duty that morning that he was
7 going to kill, he would have been thinking of killing Al
8 Collins; but Al Collins switched with Ben Stone. This is at
9 Respondent's Exhibit 17, Page 15 and 18.

11:13:20AM 10 So, if Mr. Aldridge had been planning on
11 killing his manager or had been -- you know, had this idea
12 that his manager had been sexually assaulting him and needed
13 to be killed, he would have been thinking about Al Collins;
14 but the last-minute shift change put Ben Stone in place. But
11:13:39AM 15 your explanation is that he thought both Mr. Collins and
16 Mr. Stone were sexually assaulting him?

17 A. My understanding was that he didn't name any people prior
18 to that, that he wasn't intending to kill anybody, but that
19 the spirits and his -- these hallucinations were telling him
11:13:56AM 20 that many people were molesting him. He felt eyes of other
21 employees, of managers, of individuals, standing behind him in
22 the McDonald's, by them standing behind him, that their eyes
23 were molesting him.

24 Q. Okay.

11:14:09AM 25 A. So, he did not indicate an individual person. He

1 indicated numerous people.

2 Q. Okay. Now, when Dr. Quijano asked Mr. Aldridge about his
3 factual and rational understanding, he got different answers
4 about his understanding of the crime than you did when you
11:14:25AM 5 asked similar questions of Mr. Aldridge; is that correct?

6 A. Somewhat different under the factual, but he asked more
7 factual questions about the individuals than I did.

8 Q. Uh-huh. And, in fact, Mr. Aldridge had some different
9 accounts to his family before he was arrested. We started
11:14:43AM 10 talking about that on Friday. Do you recall that?

11 A. That is your statement. Yes.

12 Q. Those are actually the sworn statements of other people
13 involved in this case, wasn't that right?

14 A. Are you speaking about the Houston records -- the police
11:14:56AM 15 department records?

16 Q. Yes. Uh-huh.

17 A. Yes, that was the case.

18 Q. Okay.

19 MS. ODEN: May I approach, Your Honor?

11:15:02AM 20 THE COURT: You may.

21 MS. ODEN: For counsel's reference, I'm referring to
22 Respondent's Exhibit 17. We're starting at Page 44.

23 MR. RYTTING: Do you have an extra copy of that?

24 MS. ODEN: Kathy, I have our copy in my hand, unless
11:15:41AM 25 you have a spare.

1 MS. HAYES: I might. Unless you pulled these. Did
2 your copies come from the notebook?

3 MS. ODEN: Huh-uh. My copies came from my binder.

4 THE COURT: Chris, do you have a copy over there?

11:16:09AM 5 No? Okay.

6 MS. ODEN: Don't pull the page, Kathy, because
7 there's going to be a lot of pages.

8 MS. HAYES: Your Honor, they can have this.

9 MR. RYTTING: Is that it?

11:16:28AM 10 MS. HAYES: I need it back.

11 MS. ODEN: Kathy, it looks like they have a copy.

12 MS. HAYES: That is the Judge's only copy.

13 MR. RYTTING: And, again, I'm sorry, what page were
14 you on?

11:16:42AM 15 MS. ODEN: 44.

16 BY MS. ODEN:

17 Q. Dr. Mosnik, I'm referring to the Houston Police
18 Department records. And I understand that you are not
19 familiar with these, but I want to see if some of the

11:16:56AM 20 information in here changes your opinion or influences your
21 opinion in any way. Okay?

22 A. This is the same sheet that you showed me on Friday.

23 Q. It might be. It is from the same police report.

24 A. It is the same sheet.

11:17:08AM 25 Q. So, on Page 44 we're reading the police offense report

1 from Sergeant Brian Foster. And here it indicates that
2 "Ford," that would be the brother-in-law, "told him that he
3 has a nephew named Garfield Aldridge. According to Ford,
4 Garfield called him the day before his picture turned up in
11:17:25AM 5 the paper. Garfield told him that he was in a big jam and
6 that he needed some help." Okay. That's one piece of
7 information.

8 Now I'm referring to Page 54. "Ford said" --
9 I'm reading about -- maybe the start of the third paragraph
11:17:44AM 10 from the top. "Ford said that Garfield took the money and the
11 gym bag and got out of the car and hid in some bushes behind
12 the stores. Garfield told Ford and Gladys to be sure and get
13 his passport and his clothes."

14 And I'm skipping down to the fifth paragraph on
11:17:59AM 15 the page. "Ford said that Garfield told him they would take
16 him home after he helped Garfield get a room in a motel. Ford
17 said that he told Garfield that he didn't have identification
18 and could not get the room. Garfield then decided to go by
19 Ford's nephew's house and get the nephew. Ford stated that
11:18:16AM 20 the nephew is named James Thomas, and they took Thomas to the
21 Olympic Motel on I-45 off Tidwell. Ford said that the room is
22 in Thomas' name."

23 And then the last paragraph on the page, "Ford
24 stated while they were in the motel room, Garfield was asking
11:18:30AM 25 Gladys' advice about the gun. Ford added that Garfield was

1 wondering whether or not they should keep the gun or if he
2 should get rid of it. Ford stated that Gladys told Garfield
3 to give her the gun and she would give it to their other
4 brother Terrol Aldridge. Ford said that Terrol takes in
11:18:41AM 5 property and is a gun nut. Garfield gave the gun to Gladys so
6 that she could give it to Terrol." And that's all I need from
7 that page.

8 Another account from Garfield is found on
9 Page 78 from the same exhibit. I'm looking at the second full
11:19:01AM 10 paragraph on the page. "Ford stated that around 6:30 to 7:00
11 p.m. Wednesday a week ago, Garfield had called him at his
12 store. Garfield asked him if he had any cars around to sell.
13 Ford explained he often buys and sales things if he can make
14 money off of them and he often has extra cars. He told
11:19:16AM 15 Garfield he did not have any at this time. It sounded to Ford
16 like something was wrong with Garfield and asked him what was
17 going on. Garfield told him that something was going on but
18 he could not talk about it on the phone. Garfield asked Ford
19 what time he got off, and Garfield told him around midnight.
11:19:35AM 20 Garfield told him maybe he would get with him after that."

21 THE REPORTER: I'm sorry. Can you slow down,
22 please?

23 THE COURT: A little slower.

24 MS. ODEN: I'm sorry.

25 THE REPORTER: "Garfield asked Ford what time"?

1 BY MS. ODEN:

2 Q. -- "what time he got off, and Ford told him around
3 midnight. Garfield told him that maybe he would get with him
4 after that."

11:19:44AM 5 A. And what is the time of that? What is the date of this?

6 Q. This is dated the 17th.

7 Now I am looking at Houston police report,
8 Page 274 and 275. This is back to the sworn statement of
9 James Thomas that you read on Friday.

11:20:01AM 10 A. Uh-huh.

11 Q. So, I'm just pointing out the last paragraphs on this
12 page and the first on the next.

13 "Garfield said that him and his manager had
14 gotten into a struggle and that he had to shoot him. He did
11:20:16AM 15 not say why they had been fighting. Then he said that he had
16 to take the money out of the safe to make it look like a
17 robbery. Maxey has asked me" -- and for the record Sergeant
18 Maxey is one of the officers who is doing the investigation on
19 the case.

11:20:29AM 20 "Sergeant Maxey has asked me and I do not
21 remember Garfield saying anything about anyone or any enemies
22 being after him. He said that he wanted to leave the country.
23 He said something about wanting to go to some embassy because
24 he is a Muslim, and they have a lot of power in some
11:20:47AM 25 countries." Okay.

1 Now I am going back to Page 55. "Ford said he
2 got the impression that Gladys was a partner to the robbery.
3 He said she never actually admitted taking part but Garfield
4 told her that he needed to keep the money and she could have
11:21:05AM 5 his pulse card, the money in his bank account, about \$40, and
6 all the furniture in his apartment for her cut. Ford said
7 that Gladys acted like she was going to go back to the
8 apartment and get Garfield's property later in the afternoon."

9 I'm now looking at Page 68 of the police
11:21:23AM 10 report. I'm at the fourth paragraph from the top, about
11 halfway through it. "Anthony asked his mother what the deal
12 was. She then told him that the suspect had become involved
13 in some kind of scuffle with the manager of the McDonald's
14 where he worked and had to kill him in self-defense. Anthony
11:21:41AM 15 said he had no reason to doubt the self-defense story until
16 the sergeant showed up at his brother's house the next day and
17 he realized what had happened, but he did not call the police
18 in regards to this incident."

19 And then a little further down is the interview
11:21:53AM 20 with James Thomas. "The suspect told James that he had become
21 involved in a struggle with the manager of the McDonald's
22 where he worked and he had to kill him. Garfield also told
23 James since he had to kill the man, that he stole the money
24 out of the safe to make it look like a robbery."

11:22:08AM 25 We are hearing a lot of different explanations

1 or articulations of what was going on around the time of the
2 crime from Garfield to his family members before he was
3 arrested; is that right?

4 A. I don't think that you are hearing a lot of different
11:22:25AM 5 alternatives, no. I think you are hearing one.

6 Q. Well, it is different from the explanation he gave to
7 you; is that right?

8 A. Not necessarily, no; but that could incorporate that.
9 Nobody is asking about delusions. There's no timing about
11:22:37AM 10 that. That doesn't mean they didn't exist.

11 Q. Well, this is different from what he told you because he
12 is not talking about the delusions in these explanations, is
13 he?

14 A. That is correct.

11:22:47AM 15 Q. Okay. You already read Gladys Aldridge's account, which
16 is found on Page 282 of the same respondent's exhibit. I'm
17 looking at the second full paragraph after he is Mirandized.

18 "Garfield first told me he did not want any of
19 the family to know anything about what he had done because it
11:23:10AM 20 would be better for us. Garfield said, 'I had to do
21 something, and they deserved it.' He would also not let me
22 turn on the radio because he did not want me to hear the news.
23 At one point Garfield told me he was supposed to be at work at
24 the McDonald's that morning. I asked him if he hurt anybody.
11:23:26AM 25 He said that he did what he had to do. I asked him what he

1 got into, and he said that he got into a squabble with the
2 manager of the McDonald's where he worked. He said, again,
3 that he had to do something. I asked him if it could be
4 undone and he said that it could not."

11:23:42AM 5 And the last paragraph on the page, "Also, I
6 forgot to tell about Garfield's gun. After we let Garfield
7 out at the Olympic Motel, I called him later that day. He
8 told me he was looking for Edward, Jr. because Edward, Jr. had
9 taken his gun out of his gym bag. I then went over to my
11:23:59AM 10 mother's apartment to talk to Edward, Jr. I was going to
11 prove that Garfield was wrong and that Edward would not steal
12 from him. I went to my mother's apartment to talk to Edward,
13 Jr.; but he was not there. I talked to his girlfriend,
14 Joyce Gamble. She first denied that Edward had taken
11:24:12AM 15 anything, but she finally gave me the gun. Joyce gave me the
16 gun in a box. I did not look at it. I gave the gun wrapped
17 up inside my coat to James. I guess he gave it to Garfield."

18 So, what we are hearing about is that family
19 members are questioning Garfield --

11:24:33AM 20 MR. RYTTING: Your Honor, can I -- I have yet to
21 hear a question.

22 MS. ODEN: I was just starting a question.

23 THE COURT: All right. Let her finish the question.

24 BY MS. ODEN:

11:24:41AM 25 Q. So, what we are hearing is that family members are

1 questioning Garfield about the crime; and Garfield's
2 explanation is rather vague, isn't it?

3 A. Yes.

4 Q. He's not saying anything about sexual assaults, is he?

11:24:58AM 5 A. No.

6 Q. He is not saying anything about Sufi Mystics?

7 A. No.

8 Q. He's not saying anything about Nazis?

9 A. No. But he is saying that he's, you know, withholding
11:25:07AM 10 information to protect them and that enemies are after him.
11 So, he is implying that potentially there is something more
12 there.

13 Q. And from that you take that he is hiding the Sufi Mystics
14 from his family?

11:25:19AM 15 A. I'm saying that that is certainly potential, yes.

16 Q. Okay. And his family is getting the impression from him
17 that he committed a murder in self-defense, made it look like
18 a robbery, and is going through this process of escaping,
19 getting clothes, getting passport, et cetera; is that right?

11:25:37AM 20 A. I can't presume to know what the family is assuming is
21 going on.

22 Q. But they are acting on his requests, aren't they?

23 A. They are.

24 Q. They are helping him by going to his apartment?

11:25:51AM 25 A. I would clearly say that they are helping him, yes.

1 Q. They are letting him out of the car to hide so that he
2 doesn't get caught at his apartment?

3 A. Why they are letting him out of the car to hide, I don't
4 know.

11:26:02AM 5 Q. I'm not asking you why. I'm just asking is that your
6 understanding of what they did.

7 A. (No response.)

8 Q. Is that your understanding of what they did?

9 A. I just told you, I said, I don't know why they let him
11:26:09AM 10 out of the car; but they let him out of the car and he hid.

11 Q. And they, as he requested, got clothing and a passport
12 for him?

13 A. Yes.

14 Q. Okay. And, in fact, they even went back and made sure
11:26:19AM 15 that he still had his gun?

16 A. He asked them to go back, yes, to check on the gun.

17 Q. So, they made sure that he got his gun back?

18 A. Yes.

19 Q. Actually, there is some documentary evidence of why they
11:26:37AM 20 let Garfield out. Page 271 and 272, which is part of

21 Mr. Ford's sworn statement, the second paragraph starts with

22 "While we were driving, Garfield said, 'What I want to tell

23 you, brother, is I made a hit this morning; but it is nothing

24 to panic about because everything is cool.' When Garfield

11:26:58AM 25 told me this, I knew he did a robbery."

1 And I'm moving down a little bit. "Then I
2 remembered that Garfield worked at McDonald's. And I told
3 him, 'You work at McDonald's. Did you rob that McDonald's
4 that you work at?'

11:27:10AM 5 Garfield told me, 'Yes. But there's no need to
6 worry because I killed the guy.'

7 I said, 'How do you know you killed the guy?'

8 Garfield said, 'I shot him twice in the head.'

9 Garfield said, 'The gun is on the floor right there.'"

11:27:22AM 10 And then at the end of the page. "By the time
11 we were on Garfield's side of town, we got on West Bellfort
12 and dropped Garfield off behind a store in a small strip
13 center across from his apartment complex. Garfield hid in the
14 bushes and me and Gladys went to Garfield's apartment. He
11:27:41AM 15 made Gladys let him out because he was afraid the police would
16 be at his apartment."

17 Then I'm reading in the middle of the second
18 paragraph on 272, "While we were at the motel, Garfield asked
19 what to do with the pistol. He said the pistol was in his
11:27:54AM 20 name and he was afraid the police would trace it back to him.
21 Gladys said to give the pistol to Terrol Aldridge and that he
22 would know what to do with it."

23 So, we actually have some account of Garfield
24 seeking rather rationally to solve the problem of how to get
11:28:11AM 25 away without getting caught; isn't that right?

1 A. Yes. Eddie Ford's account, that's correct.

2 Q. Correct. Garfield actually gave quite a different
3 account to the police after he was arrested, didn't he? Or
4 are you aware of his account after the arrest?

11:28:29AM 5 A. According to Eddie Ford, that's correct.

6 Q. Okay. This is the same exhibit, Page 60. This is the
7 interview with Garfield Aldridge. "Garfield was read his
8 legal rights again, and he stated that he understood.

9 Aldridge was very calm and collected and was furnished several
11:28:47AM 10 cups of coffee at his request." The subject -- excuse me.

11 "The suspect was asked about the murder and robbery at the
12 McDonald's. Garfield then went into a lengthy speech about
13 his duty to Allah and his holy journey of which he needed to
14 make. He admitted being present when Ben Stone was killed but

11:29:05AM 15 would not admit to actually doing the killing. He stated that
16 since Stone was an infidel, non-Muslim, that it was

17 permissible to kill him and steal the money to achieve his
18 goal. Garfield's goal was to make contact with the Iranian
19 embassy in Mexico City and then" -- it is not clear what the

11:29:23AM 20 word is -- "to Iran to live in peace as a good Muslim. Again,

21 he stated that whatever he had to do to get there did not
22 really matter. It should be noted that while Garfield would
23 liked to have put this entire bad experience off on his

24 religion, he was also very concerned with the evidence against
11:29:42AM 25 him; i.e., fingerprints, witnesses, et cetera. After a while

1 Garfield decided that he really needed a lawyer more than he
2 needed Allah and ended the interview. Garfield had been
3 advised that he was under arrest for capital murder and had
4 been filed on for carrying a firearm. After he ended the
11:29:58AM 5 interview, he was placed in the city jail. Before leaving,
6 Garfield said that he trusted lawyers even less than he
7 trusted the police and said that he might want to talk in the
8 future."

9 So, once he is arrested, Garfield no longer
11:30:13AM 10 sticks to the plain self-defense story, took the money to make
11 it look like a robbery, does he? He doesn't say anything
12 about self-defense to the police, does he?

13 A. Not in that passage, no.

14 Q. No. And, in fact, what he says is that he needs to go to
11:30:30AM 15 an Iranian -- he needs to go to a Muslim country and he stole
16 the money because he needed to fulfill his religious -- his
17 religious destiny, I suppose. He doesn't use the word
18 "destiny," does he?

19 A. Not in that passage, no.

11:30:45AM 20 Q. And he says that it is okay that he killed the manager --
21 or that it is okay that the manager was killed because the
22 manager was not a Muslim?

23 A. That's implying. I don't know that he said that
24 specifically, but he said that he would do whatever it took to
11:31:01AM 25 achieve his goal.

1 Q. And he does not admit to committing the murder himself?

2 A. Right.

3 Q. So, that's another different version from what he told
4 Dr. Quijano. Didn't he tell Dr. Quijano that he did commit
11:31:14AM 5 the murder but it was because he had to prevent the sexual
6 assault from happening in the future?

7 A. No. My understanding is that -- reading his report, is
8 that he didn't commit the murder, that the murder was
9 committed through him.

11:31:27AM 10 Q. Well, that's what he told you. That's not what he told
11 Dr. Quijano. What he told Dr. Quijano is that he committed --

12 A. Could I refer to Dr. Quijano's report? Can I have that
13 in front of me?

14 Q. Sure.

11:31:44AM 15 I'm not sure which exhibit number Dr. Quijano's
16 report is.

17 MS. HAYES: 12 for us, 8 for them.

18 BY MS. ODEN:

19 Q. Respondent's Exhibit 12, Petitioner's Exhibit 8. I'm
20 showing you pages -- and there's some faxed pages numbered at
21 the top. I'm referring to the page numbers that are at the
22 bottom of his report. I'm looking at Pages 4, 7, and 8. If
23 you need to see the whole report, you can; but I have
24 underlined some portions.

11:32:10AM 25 Under "rational understanding" what I have

1 underlined is that "because he violated written laws by taking
2 a life for which he will be judged."

3 A. But that's Dr. Quijano's interpretation and rewording.
4 Those also weren't the words by Mr. Aldridge.

11:32:24AM 5 Q. You're right. And we don't have Mr. Aldridge's words, do
6 we?

7 A. Yes, he did, in the statement where he is talking.

8 Q. What I am saying is we don't have an audio recording or a
9 video recording of that interview, do we?

11:32:37AM 10 A. No. But I am saying that this line that you're
11 underlining in that paragraph, there is a summary statement by
12 Dr. Quijano.

13 Q. Correct. And we don't know for sure that any of these
14 words are exactly what Mr. Aldridge spoke. This is all what

11:32:50AM 15 Mr. -- what Dr. Quijano wrote down as coming from
16 Mr. Aldridge.

17 A. Right. Right.

18 Q. Right.

19 A. But there's a difference between what is written down and
11:32:58AM 20 what he is attempting to quote that Mr. Aldridge is saying
21 versus something that he is saying.

22 Q. So, on Page 7, we see, "Rulford was about to blow off the
23 killing when the victim and the spirits took control and
24 repeated that he, the victim, would not stop sexually

11:33:12AM 25 assaulting him until he was killed. That built Rulford's

1 anger up; and with the guy's control of Rulford by blackout,
2 Rulford became even more angry and asked himself what kind of
3 God has he surrendered himself to. Rulford drew the pistol
4 and called the victim who had previously told him not to
11:33:29AM 5 prepare the grill. The victim asked him not to shoot. And he
6 told him to open the safe because he would not touch it
7 because he was not a thief since he was a part owner as a
8 shareholder. The victim loosened his tie and assumed a
9 running position and asked the guy to make Rulford to drop his
11:33:45AM 10 gun. Rulford then asked himself how he could get out of the
11 situation and thought he could not back off then since he was
12 in deep. Rulford then told the victim to lay down on the
13 floor. He walked to the office, still not wanting to touch
14 the safe, walked back to the victim and shot him once, backed
11:34:02AM 15 off and looked down on him. He said to the victim, 'Tell me
16 this is not blood, Ben, and you are not dead.' A strange
17 feeling fell all over him and he thought of walking away, but
18 the guy told him to get the safe and money and he did and
19 turned to walk away. A spirit from the victim's body or an
11:34:20AM 20 imitation of him said that he was not dead and for Rulford to
21 come back and finish the job. Otherwise, he would call the
22 authorities on him. Rulford resisted because he was not
23 barbaric and criminal. At this time Rulford interrupted his
24 narration because the guy told him in his left ear that before
11:34:37AM 25 he put the gun to the victim's head, he should think of a way

1 to get out of this. But then the victim told him to do it
2 right and pull the trigger. Rulford then knelt down and shot
3 the victim again."

4 So, in Rulford's words, as recorded by

11:34:52AM 5 Dr. Quijano, Rulford committed the murder. He was being told
6 to do it by the spirit and by the spirit in the victim's body,
7 but Rulford pulled the trigger; is that right?

8 A. But it seems to be that he is having an argument with
9 this voice, that this voice is urging him to do things that go
11:35:13AM 10 against what he wants to do.

11 Q. He's definitely -- the story that he is pitching to
12 Dr. Quijano is definitely that he is doing it at the urging of
13 the spirits?

14 A. Right. That he's not doing it intentionally. The
11:35:22AM 15 purpose and the intention of the act is not his. It is the
16 commands and the hallucinations. He is doing it because he
17 cannot stop doing it from this voice. So, he appears to be
18 fighting with it and losing the fight.

19 Q. That's what you got out of that?

11:35:35AM 20 A. Yes.

21 Q. But nowhere in there does it say Rulford didn't do it,
22 the spirit did it in him, did it?

23 A. Yes, it did on the top line of the second paragraph.

24 Q. Okay. Would you say speaking -- looking at this case
11:35:53AM 25 chronologically, that Mr. Aldridge's symptoms are worsening

1 over time?

2 A. I think it seems that he has a severe delusional network
3 that has been severe throughout the case and prior to the
4 case, during the case, and after the case.

11:36:17AM 5 Q. So, that's a no, it is not getting worse?

6 A. Yes. I don't know that it appears to be getting worse.

7 Q. Do you think his symptoms have been as bad throughout
8 time as they are now?

9 A. Yes. I think there are indications that that is true,

11:36:37AM 10 yes.

11 Q. Is it possible to be -- to have schizophrenia and still
12 be competent?

13 A. That's a debatable question.

14 Q. Okay. But I would like to know your opinion.

11:36:49AM 15 A. I think if a patient with schizophrenia is treated and on
16 medication, yes, that it is likely they can be competent,
17 although it is not always the case. If they're treated on
18 medications, they are competent. And I think there may be
19 some cases, depending on the type of symptomatology that a
11:37:05AM 20 patient with schizophrenia has; but I believe most patients
21 who are untreated for schizophrenia would likely be
22 incompetent.

23 Q. Okay. What is -- are you familiar with the literature
24 that addresses the relationship between patients with

11:37:21AM 25 schizophrenia and their competence to stand trial?

1 A. Some of it, yes. I'm sure not all of it.

2 Q. What is the correlation between having schizophrenia and
3 being competent to stand trial?

4 A. The actual number?

11:37:34AM 5 Q. Yes.

6 A. That I don't know.

7 Q. You are not familiar with the range?

8 A. No.

9 Q. Let's talk about the time line of the development of
11:37:44AM 10 Mr. Aldridge's schizophrenia. Did I understand correctly that
11 you said 1980 is when -- how did you describe what happened in
12 1980?

13 A. Yeah. There seems to be an indication from reports that
14 there was some change in his behavior and a change in his
11:37:59AM 15 writings during that period when he was in prison in the early
16 1980s.

17 Q. Okay. That's also based on the defendant's account, on
18 Mr. Aldridge's own account, in 1990, looking backwards; is
19 that right?

11:38:14AM 20 A. Some of that, yes.

21 Q. Okay. So, we're looking basically at two kinds of
22 evidence to support that, what the family says about his
23 letters coming out of prison --

24 A. Right.

11:38:23AM 25 Q. -- and his own accounts from 1990, after he's been

1 arrested, convicted, and sent to death row.

2 A. Right. And the LPC's evaluation, also, in T.D.C. in June
3 of 1990 also states that there could be a 10-year history.

4 Q. Right. And that's based on Mr. Aldridge's self report?

11:38:47AM 5 A. In part. And I don't know what records she had to
6 review, as well.

7 Q. Did you make any effort to find those records?

8 A. I wasn't able to contact that person.

9 Q. Okay. Did you try to contact that person?

11:38:58AM 10 A. I did not.

11 Q. Okay. You are aware that in 1975, Mr. Aldridge was
12 telling people in prison that he saw bugs on the bread and was
13 picking through the bread?

14 A. Yes, I did read that.

11:39:10AM 15 Q. Did you -- what kind of data did you believe that to be,
16 evidence of delusions or a reasonable reaction to literally
17 seeing bugs on the bread?

18 A. Well, in the reports there were other people there who
19 were writing in that -- the writings that I saw that there

11:39:28AM 20 were no bugs, that the individual who had just set them out on
21 the food tray had just opened a new pack and there were no
22 bugs. So, that certainly could be an indication of a visual
23 hallucination.

24 Q. Okay. So, maybe his schizophrenia didn't start in 1980?

11:39:46AM 25 A. That's possible. I mean, there are some reports that it

1 was as far back as childhood.

2 Q. Okay. But he was able to successfully complete his GED,
3 which happened in February of 1980?

4 A. In prison, yes.

11:39:55AM 5 Q. In prison, correct.

6 A. That's my understanding.

7 Q. And the notes in his medical records from T.D.C.J. on his
8 prior incarcerations, 1990 -- 1981, excuse me, indicate that
9 his neuropsych status is normal. Are you familiar with those?

11:40:13AM 10 A. I am not.

11 Q. Did you see his records from his prior incarcerations?

12 A. From T.D.C.J.?

13 Q. Uh-huh.

14 A. Yes, I did see them. I looked through those, yes.

11:40:24AM 15 Q. Okay. So, you didn't notice that in his medical records
16 from those prior incarcerations, for example, on
17 December 27th, 1981, which is found at prior medical records
18 T.D.C.J., Page 33, that his neuropsych status was normal?

19 A. No. I do not recall seeing that.

11:40:42AM 20 Q. Okay. Or on Page 36, which was from March 5th, 1982,
21 that his neuropsych status is good?

22 A. Is it neuropsychology or neuropsychiatric?

23 Q. Neuropsychological.

24 A. And was there a neuropsychological report or data present
11:41:00AM 25 there?

1 Q. Those are the notes in his medical records.

2 A. No. I am not familiar with those.

3 Q. Are you familiar that April 8th, 1983, that he is noted
4 to be -- I'm sorry -- November 14th, 1983, he is noted to be
11:41:13AM 5 very coherent and concise. This is from his prior records,
6 Page 120, and classification records, Page 177.

7 A. I would believe you if that's what they say.

8 Q. Okay. In fact, I could give you a list of dates
9 throughout 1983 and 1984 in the records where he's noted to
11:41:32AM 10 have normal neuropsychological status. Would that affect your
11 opinion at all?

12 A. I would have to see the data that goes along with that.
13 If that's just the -- the records that I reviewed from his
14 medical status in the mental health visits to his jail cell
11:41:45AM 15 have no data. They weren't able to conduct interviews. No
16 assessments were done, as far as I'm aware. There's no data
17 to back up any of those statements. They would come by and,
18 you know, ask a question: Are you doing okay? You know, the
19 patient says he is doing fine. He refuses, you know, an
11:42:00AM 20 evaluation. So, there was no data.

21 Q. Okay. One of the things that you pointed out as evidence
22 or an indication that he was schizophrenic and not in touch
23 with reality was that his hygiene was declining?

24 A. Uh-huh. That can be a sign, yes.

11:42:15AM 25 Q. But we know, at least from his own statements, that he

1 wasn't shaving in prison because he was a Muslim; isn't that
2 right?

3 A. Yes.

4 Q. And at one point he even says he is not shaving because
11:42:26AM 5 he wants to see a skin specialist. Are you aware of that?

6 A. He had complaints about his skin, yes.

7 Q. Are you aware that often African American men, when they
8 shave, get a dermatitis?

9 A. Yes.

11:42:38AM 10 Q. Okay.

11 A. It wasn't just the shaving. It was the bathing,
12 showering.

13 Q. Okay. And are you aware that in, again, his prior
14 incarceration medical records, May 23rd, 1986, which is
11:42:50AM 15 Pages 54 and 55, that the prison staff noted that he is
16 exhibiting manipulative behavior?

17 A. I'm aware of those reports, yes.

18 Q. But that doesn't affect your opinion, or does it?

19 A. That doesn't. That's their interpretation of his
11:43:05AM 20 behavior, yes.

21 Q. Okay. Let's talk a little bit about his ability to
22 communicate with counsel. Unfortunately, I wasn't present for
23 Mr. Davis' testimony this morning. But one of the primary
24 things that you relied on is Mr. Bates' testimony at trial in
11:43:23AM 25 the punishment phase; is that right?

1 A. Yes.

2 Q. Where he says that sometimes he wasn't able to
3 communicate with him?

4 A. Uh-huh.

11:43:28AM 5 Q. And he answered "yes" when he was asked one question
6 about a conversation, whether or not it was rational. He said
7 it was not rational.

8 A. Okay.

9 Q. I mean, that was something you were relying upon, right?

11:43:40AM 10 A. I did rely on Mr. Bates' testimony, yes.

11 Q. Okay. So, again, you didn't make any effort to talk with
12 Mr. Bates about what that meant?

13 A. I said I don't recall if I did or not.

14 Q. Well, if you had, you would have made note of it, right,
11:43:53AM 15 because that would be important information in this kind of
16 case?

17 A. Well, I didn't have it noted in my report that I had
18 attempted to meet with Mr. Davis; and I had.

19 Q. Okay. So, do you think you would have remembered getting
11:44:05AM 20 in contact with Mr. Bates?

21 A. If I would have gotten into contact with him, I would
22 have remembered that.

23 Q. Okay. Dr. Quijano actually said -- not that Mr. Aldridge
24 was not competent; but he said, hypothetically, Mr. Aldridge
11:44:21AM 25 wouldn't be competent if Mr. Bates' testimony was accurate and

1 reflected the majority of his interactions. Do you recall
2 that?

3 A. He said -- Dr. Quijano said most, yes.

4 Q. Have you taken into account the motive behind Mr. Bates'
11:44:38AM 5 testimony in evaluating whether or not his testimony was
6 accurate?

7 A. Yes, I did.

8 Q. What do you believe Mr. Bates' motivation was for
9 testifying the way he did?

11:44:48AM 10 A. Well, I think they used that during the punishment phase,
11 as Mr. Davis suggested, to try to get some sympathy from the
12 jury so that they wouldn't inflict the death penalty.

13 Q. And what effect does that have on your evaluation of
14 whether Mr. Bates' testimony is accurate?

11:45:02AM 15 A. That I don't doubt at all the accuracy of his report.
16 That doesn't change my ability to assert that he was accurate
17 and would testify truthfully.

18 Q. Okay.

19 A. He was under oath.

11:45:15AM 20 Q. Mr. Davis was under oath when he said that Mr. Aldridge
21 was able to communicate and was able to understand what was
22 going on?

23 A. Are you talking about his testimony today and on Friday?

24 Q. Yes.

11:45:26AM 25 A. He testified that he doesn't remember much about that,

1 and he was estimating and trying to come up with answers to
2 questions that he primarily testified that he does not
3 remember any of those interactions.

11:45:38AM 4 Q. Since I wasn't present for today's testimony, I can only
5 speak about Friday. But on Friday didn't he testify that he
6 didn't remember specific questions or answers or conversations
7 but that Mr. Aldridge was able to communicate rationally with
8 him?

9 A. He's surmising that he was able to, yes; but he has no
11:45:54AM 10 evidence to back that up.

11 Q. And didn't he, in fact, testify that he never felt
12 hostility from Mr. Aldridge and never felt that Aldridge
13 thought he was part of a conspiracy? Do you recall that on
14 Friday?

11:46:08AM 15 A. He stated that he never felt like he was hostile towards
16 him at all. Yes, that is correct.

17 Q. Do you recall him also testifying that he did not get the
18 impression from Mr. Aldridge that Aldridge thought he was part
19 of a conspiracy?

11:46:20AM 20 A. He stated that he does not recall Aldridge ever saying to
21 him directly that he was part of a conspiracy because he said
22 that if he did, he would have said something to the Court but
23 he does not recall that specifically.

24 Q. And you recall that what Mr. Aldridge said to Dr. Quijano
11:46:35AM 25 about his own attorneys was that he wasn't sure and he was

1 going to wait and see if he could trust them?

2 A. Right. At that point, yes.

3 Q. And do you recall --

4 A. That was prior to the trial is my understanding.

11:46:47AM 5 Q. I'm sorry?

6 A. That information that Dr. Quijano got was prior to the
7 trial.

8 Q. Correct. It was.

9 And you recall that Mr. Davis testified that he

11:46:55AM 10 was always able to redirect Mr. Aldridge when they were
11 starting to ramble in their communications?

12 A. He may have said that on testimony, yes.

13 Q. But you don't find that to be inconsistent with your
14 conclusion?

11:47:09AM 15 A. Of incompetence?

16 Q. Yes.

17 A. No, I don't find that inconsistent.

18 Q. So, you are capable of concluding with a reasonable
19 degree of scientific certainty that Mr. Aldridge was not

11:47:21AM 20 competent even though his own attorney testified that he was
21 able to communicate with him and that he was able to redirect
22 him and get rational information from him?

23 A. From the information that was available from the time of
24 the trial -- around the time of the trial, which is the

11:47:38AM 25 testimony of Mr. Bates, that does not appear to be case. And

1 in Mr. Davis' testimony now, he continually asserts that he
2 does not remember any of those direct conversations; and he
3 himself admits in his affidavit that the testimony and
4 information available closer to the time of trial would be
11:47:55AM 5 more accurate than his recollection at this time.

6 Q. So, the competency case then hangs on those sentences of
7 Mr. Bates in the punishment phrase. That is what you hang
8 your conclusion on.

9 A. That is a part of the data that I utilized, yes.

11:48:13AM 10 Q. And the rest of the data that you utilized is how
11 incompetent Mr. Aldridge is right now?

12 A. Yes. And all the evidence that was present, in terms
13 of -- for describing his mental illness or pertaining to his
14 mental illness prior to the time of the crime, during the
11:48:30AM 15 crime, and subsequent to that is the other information I used.

16 Q. There are some other inconsistencies between what data we
17 can observe and things that are reported. You mention that
18 Mr. Aldridge says he has experienced command hallucinations to
19 hurt himself; is that right?

11:48:47AM 20 A. To hurt himself?

21 Q. Yes. That was your testimony on direct examination on
22 Friday.

23 A. I don't recall saying that he has command hallucinations
24 to hurt himself.

11:49:00AM 25 Q. Okay. So, do you recall him ever expressing that to you?

1 A. Can you give me the context of that?

2 Q. You were describing some of his command hallucinations.

3 Has he ever told you that he had command hallucinations to

4 hurt himself?

11:49:18AM 5 A. I don't recall any command hallucinations to hurt

6 himself.

7 Q. Okay. So, if I misheard that, I apologize.

8 You also stated that an increase in

9 environmental stress would cause an increase in the expression

11:49:38AM 10 of his symptoms; is that right?

11 A. They would cause an increase in the severity of his

12 delusions.

13 Q. Okay. Reentry into the department of criminal justice

14 going on to death row should have made him a lot worse, right?

11:49:53AM 15 A. It potentially could have.

16 Q. Why would it maybe not have? He's not getting treated,

17 right?

18 A. Right. He's not get treated.

19 Q. He's not getting medication. He's not getting therapy or

11:50:09AM 20 counseling.

21 A. He was already familiar because of the years he spent in

22 the criminal justice system during his prior incarceration.

23 Q. Okay. You mention that he stuck with his story of being

24 beaten in jail despite all the evidence to the contrary, and

11:50:24AM 25 that is evidence that he was -- that that was part of his

1 fixed delusional system; is that right?

2 A. Are you talking about his testimony in regards to his
3 confession?

4 Q. Correct.

11:50:34AM 5 A. Yes.

6 Q. But he does change his story when confronted with the
7 photographic evidence, correct? He changes where he says the
8 beating took place?

9 A. Right. He goes back and forth between the county and the
11:50:47AM 10 city jail.

11 Q. And then they are showing him a picture of when he was in
12 the city; and he says, "No. It was in the county that I was
13 beaten."

14 A. Uh-huh.

11:51:00AM 15 Q. If schizophrenia is a permanent condition, why does the
16 DSM talk about partial remission?

17 A. What do you mean? Partial remission is not a complete
18 removal or absence of symptoms. It is a significant decrease
19 in the presence of symptoms so that the person can be more
11:51:25AM 20 functional, and that's typically with medication.

21 Q. Okay. So, it is possible --

22 A. That doesn't argue against a life-long chronic condition,
23 as it says.

24 Q. Sure. Kind of the way that a person might always be an
11:51:38AM 25 alcoholic but they may not drink for years, correct?

1 A. No. I would not argue that's the same as that.

2 Q. Okay. But it is similar, isn't it?

3 A. Perhaps the concept is similar.

11:51:57AM

4 Q. Okay. Mr. Aldridge was not floridly psychotic in intake
5 on death row, was he?

6 A. I'm sorry?

7 Q. Mr. Aldridge was not floridly psychotic, actively
8 experiencing hallucinations, when he was taken into death row,
9 was he?

11:52:08AM

10 A. I don't know.

11 Q. Well, if you read in the T.D.C.J. clinic notes on his
12 intake that he said: My attorneys didn't do a good job
13 representing me. They didn't even bother to let me testify.
14 I have great grounds for an appeal, that would indicate some
15 rational thoughts going on, wouldn't it?

11:52:24AM

16 A. Not necessarily. Again, it depends on what his
17 delusional thinking is at the time; and nobody questioned him
18 about that.

11:52:36AM

19 Q. Okay. So, he might have had delusions when he was being
20 taken into death row and just not talking about them?

21 A. That could certainly be.

22 Q. Okay. So, he might be able to express himself rationally
23 and understand the legal situation and not be capable of
24 expressing his hallucinations at the same time?

11:52:56AM

25 A. He could certainly present himself in what would appear

1 to be a rational manner.

2 Q. Okay.

3 THE REPORTER: I didn't hear that. I'm sorry.

4 THE WITNESS: I said he could certainly appear to be

11:53:01AM 5 expressing himself in what would appear to be a rational

6 manner.

7 BY MS. ODEN:

8 Q. One of the things that you emphasize was that

9 Mr. Aldridge has poorly adapted to life inside the prison.

11:53:41AM 10 You mentioned that there were many times that he refused to

11 work. He demonstrated apathy, et cetera; is that right?

12 A. Yes.

13 Q. And to you that is an indication of his continuing

14 schizophrenia?

11:53:53AM 15 A. It can be.

16 Q. Okay. It could also be symptoms of being an antisocial

17 personality, couldn't it?

18 A. Yes.

19 Q. You mention that when he was in the real world, he had a

11:54:06AM 20 hard time holding down a consistent job; is that right?

21 A. Right. So, it appears that we have to assess that, yes.

22 Q. Right. And many of those jobs were menial jobs?

23 A. (Witness nods head.)

24 Q. She can't take down a nod. So, if you'll --

11:54:21AM 25 A. Oh, yes. Sorry.

1 Q. And he moved around to a lot of different residences?

2 A. Yes. That's correct.

3 Q. Lived with some family members for brief periods and
4 other family members; is that right?

11:54:32AM 5 A. That's correct.

6 Q. Okay. But that also could be a result of an antisocial
7 personality?

8 A. Potentially, yes.

9 Q. I mean, he was in prison from the time he was 17, for
11:54:43AM 10 14 years.

11 A. Uh-huh.

12 Q. So, he really didn't have much work history?

13 A. Right.

14 Q. Didn't really have a whole lot of life skills from living
11:54:51AM 15 on his own?

16 A. Right.

17 Q. But he was able to get a GED while he was in prison?

18 A. In prison, yes.

19 Q. And while he was in prison, he was able to get an AAS
11:55:00AM 20 degree, some kind of Associate's degree; is that right?

21 A. I could find no evidence for that. That was mentioned in
22 somebody's statement, Dr. Allen's, I believe; but I found no
23 evidence for that.

24 Q. Did you find the records that indicated he was studying
11:55:15AM 25 welding and some kind of plumbing while he was in prison?

1 A. Nothing on welding but plumbing, yes.

2 Q. Okay. So, you did find records indicating he was
3 studying -- I think it was to be a plumber's helper. I'm not
4 really sure.

11:55:28AM 5 MR. RYTTING: Can I get a time frame?

6 MS. ODEN: While he was in prison. They don't train
7 people on death row. They don't give them education on death
8 row.

9 MR. RYTTING: What period are we talking about?

11:55:38AM 10 MS. ODEN: Sometime between when he was 17 and when
11 he was released from prison. I don't have a date off the top
12 of my head. I'm sorry.

13 BY MS. ODEN:

14 Q. Ultimately, we all agree that Mr. Aldridge is
11:55:51AM 15 schizophrenic right now; is that right?

16 A. Yes, I believe so.

17 Q. The real question this Court is going to have to figure
18 out is how schizophrenic was he at the time of trial; is that
19 right?

11:56:04AM 20 A. I think the Court -- did you say how schizophrenic he
21 was?

22 Q. Right.

23 A. A person is either schizophrenic, or they're not. Either
24 have schizophrenia, or they don't.

11:56:12AM 25 Q. Well, how severely his symptoms were affecting him at the

1 time of trial and at the time of the crime?

2 A. That's correct.

3 Q. Who was in the best position to make those observations,
4 you or the people that were around him at that time?

11:56:33AM 5 A. What do you mean by "the people that were around him at
6 the time"? Which people are you referring to?

7 Q. Family, his attorneys, Dr. Quijano. Who was in the best
8 position to --

9 A. Dr. Quijano. He's a professional.

11:56:48AM 10 Q. Well, who was in the best position to make observations
11 of how Mr. Aldridge was at that time?

12 A. Family members who were -- saw him on a day-to-day basis
13 from 1986 to 1990.

14 Q. Well, we're talking about at the time of the crime and at
11:57:00AM 15 the time of the trial.

16 A. Uh-huh.

17 Q. So, people who were around him back then were in a better
18 position to make those observations than you are; is that
19 right?

11:57:10AM 20 A. Well, I think my observations aren't relevant because of
21 the diagnosis of schizophrenia that he was given prior to the
22 trial. But, yes, the people around at the time would have the
23 best observations of his behavior.

24 MR. ODEN: For the record, James, the plumbing
11:57:26AM 25 certificate is found in the educational records, Page 9 to 15;

1 and it is dated August 20th, 1974.

2 MR. RYTTING: Thank you.

3 MS. ODEN: No other questions at this time, Your
4 Honor. Thank you. Thank you, Doctor.

11:57:54AM 5 THE COURT: All right. Thank you. This might be a
6 good opportunity to take our lunch break. Why don't we
7 reconvene at 1:00 o'clock? Thank you.

8 (Lunch break)

9 THE COURT: All right. Doctor, do you want to come
01:06:26PM 10 back on the witness stand, please?

11 All right. Mr. Rytting.

12 **REDIRECT EXAMINATION**

13 **BY MR. RYTTING:**

14 Q. Dr. Mosnik, we started your redirect with a couple of
01:06:49PM 15 questions about the investigation and the people that you
16 talked to and, more particular, the person you didn't talk to,
17 which was Mr. Randolph Bates the second chair in this trial.

18 Is it possible that the reason why you didn't
19 contact Mr. Bates or -- is that you were informed by counsel
01:07:10PM 20 that he didn't have anything to say in this case and doesn't
21 remember anything about Mr. --

22 MS. ODEN: Objection, leading.

23 THE COURT: Sustained.

24 BY MR. RYTTING:

01:07:19PM 25 Q. What have you learned since that Mr. Bates has filed

1 regarding -- filed in response to a subpoena from respondent
2 regarding his knowledge of anything in this case?

3 A. I was informed by defense counsel -- by you,
4 Mr. Rytting -- that he had filed an affidavit stated that he
01:07:38PM 5 did not have any records and had no recollection whatsoever of
6 the events surrounding the trial.

7 Q. And on cross-examination respondent asked you questions
8 about a proceeding in Judge Harmon's court involving a
9 defendant named Daniel Yeh, I believe.

01:08:04PM 10 A. Yes, that's correct.

11 Q. And in what state of the proceedings were you providing
12 an expert opinion?

13 A. During sentencing.

14 Q. And was -- were you -- did you provide a -- were you the
01:08:23PM 15 only expert that provided an opinion, or were you part of a
16 team?

17 A. No. I was part of a team.

18 Q. And what was the -- what was the opinion of the team
19 members? Was it consistent with yours?

01:08:42PM 20 A. Yes. We all shared the same opinion.

21 Q. And who was on that team?

22 A. Dr. Robert Grossman, who is the chair of neurosurgery at
23 Baylor, had been for many years the neurosurgeon on the case;
24 Dr. Eugene Lai, a neurologist in the department of neurology
01:09:00PM 25 at Baylor College of Medicine here in Houston; and

1 Dr. Victor Serrano, a forensic expert.

2 Q. And in Mr. Colburn's case, the government also indicated
3 that there was some disagreement between your position about
4 his competency to stand trial, I believe, and that of several
01:09:30PM 5 other experts, Dr. Axelrod and Dr. Carmen Pesell and
6 Dr. Quijano.

7 A. She did state that, yes.

8 Q. And how accurate of a statement was it, given your review
9 of an affidavit of Dr. Axelrod?

01:09:55PM 10 A. In reviewing the documentation since that questioning by
11 counsel, I have come across that affidavit where, in fact, it
12 suggests -- it, in fact, states that Dr. Axelrod agreed with
13 my finding.

14 Q. Of incompetency?

01:10:11PM 15 A. Of incompetency, that's correct.

16 Q. And when it came to the -- and so to with Dr. Quijano?

17 A. That is correct.

18 Q. And was -- there was also a statement about whether
19 she -- there was a disagreement about your finding of

01:10:30PM 20 incompetent or incompetence to be executed, and the suggestion
21 was that these experts disagreed. Did any of them formulate
22 an opinion about his competency after the execution date --
23 I'm talking about Axelrod, Dr. Quijano, or Dr. Pesell.

24 A. They did an evaluation for a competency to stand trial.

01:10:59PM 25 Q. Let me ask you, was there a -- did they come to any sort

1 of opinion after that execution date was set in Mr. Colburn's
2 case about his competency?

3 A. No, not that I am aware of.

01:11:14PM

4 Q. Is it your understanding that that is when the issue was
5 appropriately addressed as when there is an execution date?

6 A. That is correct.

01:11:53PM

7 Q. Now, opposing counsel has suggested that Mr. Aldridge has
8 been changing his story in response to what stage of the
9 proceedings he's in; that prior to his arrest, he -- well --
10 that prior to his arrest, he had one story and afterwards he
11 changed his story.

12 What have you seen in the record that indicates
13 that he's had a consistent -- expressed consistent thoughts
14 and accounts of what happened on the day of the crime?

01:12:17PM

15 A. I would say that his story has been consistent, that the
16 presence of delusions and the content and type of delusions in
17 his presentation has been consistent prior to, during, and
18 following the crime.

01:12:37PM

19 Q. And what is the basis -- what in particular is the basis
20 of this conclusion?

21 A. I'm sorry. I'm not understanding the question.

22 Q. Are his writings an indication that -- one of the things
23 you reviewed?

24 A. Yes, I did review his writings extensively.

01:12:54PM

25 Q. And were there any in particular that showed a consistent

1 pattern?

2 A. Yes. He had writings in August of 1989. He had writings
3 in possession on January 6th of 1990 prior to his arrest. He
4 had writings throughout 1990 following his arrest and the
01:13:16PM 5 trial.

6 Q. And what do you recall about, in particular, the writing
7 dated January 1, 1990 -- January 6th, 1990, that supports the
8 conclusion that he's had a consistent story -- a consistent
9 and delusional story about the circumstances of the murder and
01:13:43PM 10 his legal situation?

11 A. The themes, the content inherent in that letter were very
12 consistent with those reported in the 1989 letter that he
13 wrote to Dubai, talking about Nazis and blacks, some prisoners
14 being released from the prison; support of the guards and
01:14:06PM 15 people releasing these prisoners to harm him, to physically
16 abuse him, to molest him, inflict pain upon him, torture him.
17 Those were consistent themes throughout his writings and
18 present in the January 6th, 1990 letter, as well.

19 Q. And the January 1, 1990, letter, if I -- is it correct to
01:14:32PM 20 say that that was written during -- during the course of his
21 flight?

22 A. Right. That is correct.

23 Q. And what did it tell you, if anything, about the --
24 whether his flight was pursuant to a rational plan?

01:14:52PM 25 A. Right. He was making statements that these voices were

1 continuing to talk to him; that he was receiving command
2 hallucinations that were guiding his behavior; that he was
3 being forced to return back to Houston, which he did.

4 MR. RYTTING: May I approach?

01:15:22PM 5 THE COURT: You may.

6 BY MR. RYTTING:

7 Q. Would it help you to look at this writing?

8 A. Yes, it would. Thank you.

9 (Pause)

10 BY MR. RYTTING:

11 Q. Dr. Mosnik, while I'm looking for my version of that
12 writing, is there any particular passages within the
13 Defendant's Exhibit No. 3 that reflects disorganized thinking
14 regarding his flight and the situation in this exhibit, in
15 Exhibit 3?

16 A. Yes, I would say it does. In addition to the delusional
17 content in that letter, he has some specific episodes where he
18 endorses thought blocking, that he's having difficulty
19 continuing, that thoughts are being blocked from his mind,
01:17:16PM 20 that he's not able to go on, that the spirits are causing
21 great pain for him to continue so that his thoughts are
22 actually being blocked, that he's being influenced by the eyes
23 of many spirits that are leading him into great pains and
24 suffering.

01:17:36PM 25 So, there's numerous references to a variety of

1 different types of psychotic symptoms and influence over his
2 thoughts and actions.

3 Q. And are these -- the expressions that you find in this
4 writing, in Petitioner's Exhibit No. 3, are they consistent
01:17:56PM 5 with what Dr. Quijano found when he interviewed him on
6 March 26, 1990?

7 A. Yes, they are.

8 Q. And in what way are they consistent?

9 A. The themes of his delusion are the same; the content in
01:18:17PM 10 terms of being influenced by spirits, hallucinations, telling
11 him to do things; the pain in his ear caused by these
12 symptoms, these influences, the hallucinations, and the
13 delusions; the belief about being sexually assaulted,
14 molested.

01:18:44PM 15 Q. And you are aware, too, that on cross-examination the
16 respondent suggested that Mr. Aldridge, when he went into the
17 Texas Department of Criminal Justice, gave -- suggested that
18 some of his statements indicated he had an understanding of
19 the appellate process and appreciated what he might raise on
01:19:12PM 20 appeal? Do you recall that testimony?

21 A. I do.

22 Q. And have you had opportunity to review a writing dated
23 August 30th, 1990, that called some of that into question?

24 A. Yes.

01:19:23PM 25 Q. Okay. And what was --

1 MS. ODEN: What was the date, again, Mr. Rytting?

2 MR. RYTTING: I believe it's August 30th.

3 BY MR. RYTTING:

01:19:43PM

4 Q. That would be our Exhibit -- our Exhibit 30. It is
5 referred to by Mr. Aldridge as the contempt motion, Motion for
6 a Contempt Judgment.

7 A. Yes.

8 MS. ODEN: I'm sorry. What year was that?

01:20:05PM

9 MR. RYTTING: I believe it was 8/30/1990, is the
10 date on this.

11 BY MR. RYTTING:

12 Q. And so, that was --

13 MR. RYTTING: If I may approach.

14 THE COURT: Yes.

15 BY MR. RYTTING:

16 Q. And how, in general, do you describe this document, the
17 contempt motion?

01:20:36PM

18 A. Well, I think that he did an excellent job of copying the
19 format. I mean, he copied down to the exact -- the intricate
20 details of the little designs that are used on legal
21 documents, the symbols, the title page, everything he has
22 tried to lay out exactly like he saw in the medical records
23 that he was reviewing -- excuse me, not the medical records --
24 the legal documents that he was reviewing. So, he did an
01:20:55PM 25 excellent job of copying it and trying to present it in the

1 same format as legal documents that he has reviewed.

2 However, his argument, as he goes on -- and you
3 can see it is rather extensive -- he is not able to maintain a
4 coherent line of thought. It is not logical and rational but
01:21:17PM 5 incorporates significant delusional ideation and, as I said,
6 does not portray a consistent and logical sequencing of events
7 and thoughts coming to a rational conclusion and request.

8 Q. Is it fair to characterize the content of this document
9 as replete with delusions and hallucinatory experiences?

01:21:40PM 10 A. Absolutely. As well as thought blocking, yes.

11 Q. And have you had an opportunity to review some other
12 documents drafted by Mr. Aldridge in this case that he
13 submitted as pleadings?

14 A. Yes, numerous other documents.

01:22:02PM 15 Q. And some of which are contained in the boxes back here?

16 A. Yes, that's correct.

17 Q. What is a consistent pattern that you see in the
18 documents that Mr. Aldridge has filed or -- especially the
19 ones in which he attempts to explain his legal problems and
01:22:24PM 20 his legal situation?

21 A. The delusional content of -- that he has a belief that
22 these prisoners have been released, that they are torturing
23 him, that legal representatives -- including guards, lawyers,
24 judges -- are incorporated into this schema and are a part of
01:22:48PM 25 this entity, I guess, if you will, working against him,

1 collaborating against him; that his information and evidence
2 isn't being presented in court; that there's no consistent
3 help with him in the legal proceedings; that hallucinations
4 influence his behavior; that he is not able to think clearly
01:23:11PM 5 because of these thoughts that he's fighting off and the pains
6 that he is experiencing; the auditory hallucinations that are
7 communicating to him; their attempt to make him forget
8 information that he has as well as their attempts to block his
9 thoughts and prevent him from expressing those clearly in his
01:23:30PM 10 writings to the courts and to his attorneys and to the judges.
11 Q. Now, respondent also called your attention to several
12 Houston Police Department reports and the statements of
13 witnesses that were taken by HPD officers. What value do you
14 ordinarily put on reports such as this?
01:24:02PM 15 A. Well, I don't use police department reports in my
16 assessments.
17 Q. And turning in particular to the issue of Eddie Ford.
18 What do you know about Eddie Ford, the voracity of some of his
19 statements?
01:24:23PM 20 A. Well, from the information that I was allowed to read
21 here on the stand, there appeared to be some discrepancies
22 from being -- what I do review in the course of my evaluation,
23 my assessments in order to make determinations, are testimony
24 that's available to me. And I did review the testimony in
01:24:40PM 25 this case that was available, and there appeared to be

1 contradictions in what Mr. Eddie Ford was saying in his
2 statement compared to what was given on the stand as
3 testimony.

01:24:54PM

4 Q. Do you know whether Eddie Ford testified in this case or
5 not?

6 A. It is my understanding that he did not, and I certainly
7 didn't review any testimony by him. He was not included in
8 the records that I had.

01:25:04PM

9 Q. Can you understand why? Did you come to understand why
10 he did not testify?

11 A. No. I don't know for certain why he didn't testify.

12 Q. Was it because he was --

13 MS. ODEN: Objection, Your Honor, leading,
14 speculation.

01:25:16PM

15 THE COURT: Sustained.

16 BY MR. RYTTING:

17 Q. What if the record reflected that he was a suspect in
18 this case?

01:25:39PM

19 A. Then I wouldn't be surprised that he wouldn't be allowed
20 to --

21 MS. ODEN: Your Honor, her emotional reaction is
22 irrelevant in this case.

23 THE COURT: Sustained.

24 BY MR. RYTTING:

01:25:56PM

25 Q. Respondent also mentioned the possibility of antisocial

1 personality disorder and -- which may explain Mr. Colburn --
2 which might explain Mr. Aldridge's conflict.

3 A. She did.

01:26:25PM 4 Q. What have you reviewed that permits you to exclude
5 antisocial personality disorder in this case?

6 A. Well, all of the symptoms and then the subsequent
7 diagnosis of Mr. Aldridge, that he's given a diagnosis of
8 schizophrenia by myself in addition to Dr. Quijano and
9 Dr. Silverman and Dr. Brown. So, having a diagnosis on Axis I
01:26:41PM 10 of schizophrenia disorder eliminates the possibility of being
11 given a diagnosis of antisocial personality disorder.

12 A diagnosis cannot be made in the presence of a
13 diagnosis of schizophrenia. So, a person could perhaps engage
14 in antisocial behaviors but does not have a diagnosis of an
01:27:00PM 15 antisocial personality disorder.

16 Q. And the antisocial behaviors that you are talking about
17 would be from the perspective of whom?

18 A. Those are criminal acts in the legal system.

19 Q. And what in your testing allowed you to exclude
01:27:25PM 20 antisocial personality disorder?

21 A. Yes. The cognitive profile from the battery of tests
22 that I administered to Mr. Aldridge, the pattern is not
23 consistent with what is seen in antisocial personality
24 disorder, which they usually have intact cognitive
01:27:43PM 25 functioning. But the pattern, in fact, supports a diagnosis

1 of schizophrenia. So, showing the deficits in executive
2 functioning, verbal memory...

3 Q. And what is executive functioning, again? You may have
4 defined it already, but one more time what is that?

01:28:00PM 5 A. It is a general term used to describe how the frontal
6 lobe and interactions, connections, between the frontal lobe
7 and other areas of the brain come together to engage in
8 cognitive abilities, specifically abstract, reasoning, problem
9 solving, both in the verbal and the non-verbal domains;

01:28:24PM 10 logical sequencing of events; rational and creative thoughts,
11 if you will.

12 Q. Respondent also queried you extensively about
13 Dr. Quijano's test for competency, a certain section of his
14 report, which is our Exhibit 8. Do you recall that?

01:29:09PM 15 A. I'm sorry. Could you repeat that?

16 Q. The respondent questioned you extensively about a certain
17 section of the report, which I think Dr. Quijano characterized
18 as his competency exam as opposed to his clinical review.

19 A. Oh, yes. Yes, she did.

01:29:25PM 20 Q. Do you recall that?

21 A. I do, yes.

22 MR. RYTTING: May I approach?

23 THE COURT: Yes.

24 BY MR. RYTTING:

01:29:41PM 25 Q. And my understanding of this section -- of the results of

1 this section is that they appear on Page 9 of our Exhibit 8,
2 starting underneath the section that reads "The defendant
3 related these events to the charges he is facing."

4 Is that your understanding of what Dr. Quijano
01:30:03PM 5 is talking about?

6 A. Yes.

7 Q. And relative to the receipt of his report -- that is, the
8 psychological interview -- what importance do you place on
9 those findings?

01:30:23PM 10 A. Well, there seems to be a difference in the way that he
11 is -- is asking the questions of the client.

12 Q. Was -- do you recall his testimony where he said he had
13 a -- he was using a direct method in operationalizing the
14 questions in this section?

01:30:42PM 15 A. I do recall him saying that, yes.

16 Q. And what is, in your opinion, the problem with this type
17 of procedure?

18 A. Well, in interviewing patients or clients, as basic
19 interviewing skills we are told not to lead or direct the
01:31:03PM 20 questions to the client or the patient; that, in fact, we are
21 there to assess whether or not they have an independent
22 understanding of the facts and of the questions. So, we are
23 not to give them the answer in the question; that every
24 patient or client that we interview, we should ask the
01:31:25PM 25 questions in the same format. We should not change the format

1 of the question, depending on the diagnosis of the patient.
2 We are there to assess whether or not their diagnosis is
3 potentially having an impact on their understanding. So, we
4 cannot change the format of our questions based on that
01:31:44PM 5 diagnosis.

6 Q. Looking at this section of the report, how do we know --
7 what do we know about Mr. Aldridge's response or the way he
8 made his response? What can we tell?

9 A. We don't know. I don't know for certain if these are
01:32:02PM 10 quotes from Mr. Aldridge. I don't know if this is a
11 rephrasing by Dr. Quijano. I don't know if he nodded yes or
12 said yes. I don't know.

13 Q. And would it be possible to ask questions of, say,
14 Mr. Aldridge about another subject -- let's call it thermal
01:32:18PM 15 dynamics -- in a yes or no pattern --

16 A. Sure.

17 Q. -- and get a series of "yes" answers?

18 A. Certainly.

19 Q. That would not reflect his knowledge of thermal dynamics,
01:32:31PM 20 would it?

21 A. That is correct.

22 Q. There are some passages in there that are in quotations,
23 correct?

24 A. One, just in his words -- no. There are a couple, yes.
01:32:45PM 25 That's correct.

1 Q. And what do they say?

2 A. One in his words he states "constitutional protections."
3 Then at the end, "Let's seek recourse through other sources in
4 court." There are some other statements that he does not have
01:33:01PM 5 in quotes that says that he's saying that this is what
6 Mr. Aldridge is saying.

7 Q. And there's -- we don't have -- again, would you describe
8 this information as thin or insubstantial?

9 A. I would certainly say it would bring into question his
01:33:27PM 10 factual and rational understanding of the legal proceedings,
11 given the format of the questions that was asked.

12 Q. There was some suggestion on cross-examination, questions
13 about whether, I guess, a part of Mr. Aldridge's thinking was
14 rational or a part of his brain operated normally. Do you
01:34:36PM 15 recall those questions?

16 A. Yes.

17 Q. And what is your -- what is -- why do you disagree, if
18 you do so, about whether this is a possible explanation for
19 his conduct and actions?

01:34:58PM 20 A. I do disagree with that statement. There are parts, if
21 you will, of the brain that are functioning better than other
22 parts. But the disease as a whole -- what it affects is the
23 interconnections between the various regions of the brain.
24 So, specifically, the projections from the sensory areas of
01:35:19PM 25 the brain where a patient's brain receives input from its

1 environment through the tactile auditory and visual domains,
2 they process through the primary sensory regions through the
3 thalamus and are projected to the frontal lobe.

4 There's evidence of temporal dysfunction and
01:35:35PM 5 frontal lobe dysfunction in patients with schizophrenia; and
6 what, in fact, that affects is their rational side. What is
7 consistently affected and overridingly affected in
8 schizophrenia is the patient's ability to accurately perceive
9 and comprehend the environment around them. Their sensory
01:35:58PM 10 information is distorted. So, it is their rational thought
11 that's affected.

12 Q. And patients who are in this condition may have some
13 verbal memory, correct?

14 A. Absolutely.

01:36:12PM 15 Q. And visual memory?

16 A. Yes.

17 Q. And they may be able to perform certain intellectual
18 tasks like add and subtract numbers, correct?

19 A. Yes, that's correct.

01:36:22PM 20 Q. Nonetheless, still have severe deficits in rational
21 thinking?

22 A. Yes. That's right.

23 MS. ODEN: I know this isn't in front of the jury,
24 Your Honor; but if we could just limit the leading questions
01:36:37PM 25 to --

1 MR. RYTTING: I have no further questions along that
2 line.

3 THE COURT: All right.

4 MS. ODEN: Dr. Mosnik --

01:36:45PM 5 THE COURT: Wait a second. Along that line, he
6 said.

7 BY MR. RYTTING:

8 Q. There's also some questions about whether Mr. Aldridge
9 was mentally ill 24/7. Do you recall those questions?

01:37:04PM 10 A. Yes.

11 Q. And is it the case that he is mentally ill constantly?

12 A. Well, yes, he is mentally ill constantly. That doesn't
13 mean every single one of his symptoms is present constantly;
14 but, yes, he is mentally ill constantly.

01:37:19PM 15 Q. What sort of -- what symptoms, however, are fixed or if
16 any, are fixed and relatively stable and constant in
17 Mr. Aldridge?

18 A. His brain's ability to interpret sensory information that
19 comes through his brain, his delusion system. Those are
01:37:44PM 20 fixed. Hallucinations can be constant. They may not be
21 constant; but they can even, if a person is not attending them
22 or talking about them, can be present continually in the back
23 of their mind, if you will, constantly. But the negative
24 symptoms of schizophrenia or the loss of things are
01:38:03PM 25 continually present. Formal thought disorder is often

1 continually present. And this -- I'm speaking in an
2 unmedicated state.

3 Q. And you heard Doug Davis on redirect, correct?

4 A. Yes, I did.

01:38:38PM 5 Q. And one of things that Mr. Davis confirmed is that
6 Randolph Bates' testimony represented the way that
7 Mr. Aldridge was throughout the period that they represented
8 him?

9 A. Yes. That's correct.

01:38:53PM 10 Q. And would you agree, then -- and you will remember
11 Dr. Quijano saying that if Randolph Bates' testimony
12 represents the way that Mr. Aldridge was throughout their --
13 his attorney's representation of him, that this is a -- that
14 his testimony is reflective of the attorney/client

01:39:21PM 15 relationships and conversations, communications that he had,
16 that he would find that Mr. Aldridge was incompetent to stand
17 trial. Do you recall that?

18 A. I do recall that, yes.

19 Q. And would you -- what is your opinion of Mr. Aldridge's
01:39:38PM 20 competency to stand trial, given the information from

21 Dr. Quijano's report and Doug Davis' testimony this morning?

22 A. I do not believe that he was able to rationally engage in
23 discussions and defense options with his attorneys or engage
24 in any participating in his defense. So, I believe that he
01:40:04PM 25 was incompetent to stand trial.

1 Q. And how confident are you, based on the evidence that
2 you've heard in these proceedings and the records that you
3 reviewed, in your conclusion that he is incompetent to stand
4 trial?

01:40:19PM 5 A. I am very confident.

6 MR. RYTTING: I will pass the witness.

7 THE COURT: Thank you.

8 Any recross?

9 MS. ODEN: Yes.

01:40:57PM 10 **RECROSS-EXAMINATION**

11 **BY MS. ODEN:**

12 Q. Dr. Mosnik, not to belabor the point; but your testimony
13 and your work on the case of Daniel Yeh had nothing to do with
14 his competency to stand trial; is that right? It was
01:41:05PM 15 diminished capacity --

16 A. That's correct.

17 Q. -- for criminal liability.

18 And in the case of James Colburn, again, you
19 were not evaluating him for competency to stand trial. You
01:41:13PM 20 were evaluating him for competency to be executed.

21 A. That's correct.

22 Q. And your opinion was that further neuropsychological
23 testing needed to be done in order to determine whether
24 Colburn was competent to be executed; isn't that right?

01:41:30PM 25 A. If that's what I said in my report, yes. That's correct.

1 Q. And those five doctors that I listed on Friday all
2 disagreed with you that further testing needed to be done;
3 isn't that right?

01:41:43PM 4 A. As I told you in my previous testimony Friday, I have no
5 recollection of that. The only thing I can testify to is the
6 affidavit that I have read since.

7 Q. The affidavit of?

8 A. Dr. Axelrod.

01:41:56PM 9 Q. And in that affidavit, did Dr. Axelrod agree with you
10 that more psychological testing needed to be done on Colburn
11 to determine his competency to be executed?

12 A. No. I didn't read anything about that.

13 Q. No. So, his affidavit didn't indicate anything about
14 agreeing with you on that, did it?

01:42:11PM 15 A. On that comment, no.

16 Q. Correct. Neither did Dr. --

17 MR. RYTTING: I would like to ask for some
18 clarification. I don't even know if Dr. Axelrod or any other
19 psychologist ever replied, ever controverted Dr. Mosnik's
01:42:27PM 20 findings. Their findings were prior to her examination and
21 competency finding.

22 MS. ODEN: Then, Your Honor, I would ask that her
23 testimony regarding whether or not those doctors actually
24 agreed or disagreed with her be stricken, because the point
01:42:39PM 25 that I was arguing they disagreed with her on was her opinion

1 that further testing needed to be done to determine whether
2 Mr. Colburn was competent to be executed.

3 THE COURT: All right. I will take it under
4 advisement with all the other evidence.

01:42:53PM 5 BY MS. ODEN:

6 Q. You maintain that Mr. Aldridge has consistently presented
7 the same type and content of delusions. Could you briefly
8 give us a list of his symptoms that you are using to base that
9 conclusion on?

01:43:10PM 10 A. Yes. I think that he has delusions. I think that he has
11 religious delusions, delusions of control and influence, and
12 somatic delusions, and grandiose delusions. I also believe
13 that he has auditory hallucinations, specifically voices
14 conversing and command hallucinations of voices talking
01:43:34PM 15 directly to him.

16 I believe that he has formal thought disorder.
17 Specific examples of poverty of content of speech, thought
18 blocking, and illogicality of thoughts. I also believe that
19 he has significant negative symptoms of schizophrenia,

01:43:52PM 20 including alogia and asociality and anhedonia. I also believe
21 that he has visual hallucinations.

22 Q. Anything else?

23 A. There may be.

24 Impairment in social functioning and failure to
01:44:19PM 25 achieve his pre-morbid level of functioning based on the

1 evidence of his pre-morbid functioning.

2 Q. Somatic hallucinations?

3 A. I said somatic delusions, not somatic hallucinations. I
4 already said that.

01:44:37PM 5 Q. Anything else?

6 A. There may be. I don't know if that's an exhaustive list.

7 Q. The writings that you referenced, January 6th, 1990, he
8 wrote that after the offense was committed; is that right?

9 A. Apparently so, yes.

01:44:53PM 10 Q. It was written during his flight?

11 A. Yes. That's my understanding.

12 Q. And you mention some of the reports, that he saw the same
13 spirits, that there was a consistent report of the pain in his
14 ear, consistent reports of blackouts. He reports those

01:45:14PM 15 blackouts to Dr. Quijano, doesn't he?

16 A. I didn't say there was consistent reports of blackouts.
17 He does report blackouts to Dr. Quijano in his report, yes.

18 Q. But then he is able to report events that occurred during
19 his blackouts, right?

01:45:29PM 20 A. I don't know that.

21 Q. I mean --

22 A. He is reporting events. I don't know if those were
23 during his blackouts or surrounding the time of his blackouts.

24 Q. Well, for example, in Dr. Quijano's report, he mentions
01:45:38PM 25 that Aldridge says he had a blackout during the crime; but

1 then Aldridge goes on to describe how he forces Ben Stone to
2 open the safe, forces him to lay down, shoots him in the head,
3 shoots him again. So, there's apparently no lack of memory
4 there, correct?

01:45:54PM 5 A. Again, it is unclear. I don't know that.

6 Q. The contempt motion from August 30th, 1990. Have you
7 seen the cover sheet for that?

8 MS. ODEN: May I approach, Your Honor?

9 THE COURT: Yes.

01:46:20PM 10 BY MS. ODEN:

11 Q. This is the contempt motion that you were shown,
12 Plaintiff's Exhibit 30, right?

13 A. All right.

14 Q. Have you seen this cover sheet that came with it?

01:46:28PM 15 A. No.

16 Q. Okay. This was in the defense attorney's files, and it
17 apparently reflects that this was sent to the court on
18 October 1st, 1990; is that correct.

19 A. It says October 1st, 1990, on there.

01:46:41PM 20 Q. And there's no date in Plaintiff's 30, is there?

21 A. There was a date on here, I believe.

22 Q. Feel free to take...

23 (Discussion held off the record.)

24 A. Do you need to see that cover sheet?

01:47:33PM 25 MR. RYTTING: Well, I would just make a

1 clarification. We have a copy of the Motion for Contempt that
2 doesn't -- it has a date on it.

3 MS. ODEN: Not the copy we got.

4 MR. RYTTING: October 1, 1990. I think I said

01:47:50PM 5 August 30, 1990; and I was mistaken.

6 MS. ODEN: Correct.

7 MR. RYTTING: I need to correct that.

8 MS. ODEN: Okay.

9 BY MS. ODEN:

01:47:54PM 10 Q. So, was there another date in there that you saw,
11 September 30th, Doctor?

12 A. I would have to look through the entire thing.

13 Q. If Mr. Rytting says that it was a mistake and the date
14 was actually October 1st, 1990, would you agree with him?

01:48:04PM 15 A. I don't know. I said I would have to look through the
16 whole thing.

17 Q. Okay. Well, I'm sure we'll have time to do that later.

18 A. Okay.

19 Q. In any case that was also after the crime, wasn't it?

01:48:14PM 20 Well after the crime.

21 A. Yes.

22 Q. After his admission onto death row?

23 A. Yes.

24 Q. So, it would be a consistent presentation of his symptoms
01:48:27PM 25 with other presentations that also occurred after arrest,

1 wouldn't it?

2 A. It would be a consistent presentation of his, yes.

3 Q. You said that in your practice you don't use police
4 department reports --

01:48:50PM 5 A. I do not.

6 Q. -- as a source of information?

7 A. I do not.

8 Q. I understand that that makes sense in your elder care
9 cases in Wisconsin or perhaps your clinical practice; but you
01:49:04PM 10 don't use them in your forensic practice, those three cases
11 that you've done?

12 A. I have not, no.

13 Q. You don't consider them to be a source of information?

14 A. There's no way to question or refute that information.

01:49:19PM 15 It is one person saying -- another or two other people
16 substantive to a second or third person. So, I have no way to
17 verify that. In fact, in the Houston Police Department
18 records that you showed me, there are contradictions to what
19 was evident in the testimony.

01:49:34PM 20 Q. Well, there's going to be contradictions in data anytime
21 you are evaluating data to come to a conclusion, right?
22 There's going to be data in support of and data refuting a
23 hypothesis?

24 A. Right. I --

01:49:45PM 25 Q. And your job is to sort through conflicting data, right?

1 A. Yes.

2 Q. Wouldn't you agree that the best conclusion comes from
3 considering the most available data?

4 A. Someone could argue that, yes.

01:49:57PM 5 Q. In fact, you argued it against Dr. Allen in your reply,
6 didn't you? You believed that he didn't consider enough data;
7 is that right?

8 A. I said that he didn't interview. He didn't meet the
9 client personally.

01:50:10PM 10 Q. And if the problem was considering someone's report of
11 what someone else said means you shouldn't consider it at all,
12 then you shouldn't have considered Dr. Quijano's report at
13 all, right, because he was recounting what --

14 A. I didn't say anything about including or considering
01:50:25PM 15 anybody else's report. I said the Houston Police Department
16 records, I consistently don't use them in my evaluations.
17 Police department records.

18 Q. Because they report conflicting data?

19 A. No, that's not why I don't use them. I don't use them
01:50:38PM 20 because I have no way to -- I can't interview those patients.
21 So, I can't question the way in which that information was
22 obtained. I have no way to question that or talk to them or
23 find out those statements. So, I use evidence that was given
24 in testimony, statements that are made by people under oath or
01:50:56PM 25 if I have an opportunity to interview those individuals myself

1 personally.

2 Q. Okay. So, you're going to discount all the data that you
3 find in the Texas Youth Commission records, then, right? And
4 you are going to discount all the data that you find in the
01:51:09PM 5 T.D.C. records, right?

6 A. No. I didn't discount any of that. I looked through all
7 of that.

8 Q. But you shouldn't because you didn't have the opportunity
9 to question the people that obtained that data and find out
01:51:20PM 10 how they got it, right?

11 A. Well, that's what I said to you about the two neuropsych
12 reports that you said are available. I can't assume that --
13 what the meaning of those are. I have seen no data to support
14 those findings. I don't even know if the neuropsych means
01:51:33PM 15 neuropsychiatric information, if it means neuropsychological
16 information. There was no additional information in those
17 notes to provide me any data to verify.

18 Q. And that's what you say against comments that are
19 contrary to your conclusion, but what about data that would
01:51:47PM 20 apparently support your conclusion? You are more than willing
21 to accept that without questioning, right?

22 A. I looked at all of the data, whether they accepted or
23 refuted, except for the police department records.

24 Q. Actually, though, it's not like we're just looking at
01:52:01PM 25 police department notes from some random police officer. We

1 also have sworn affidavits in the police file; but you didn't
2 consider that until you got a chance to read it on the stand,
3 correct?

4 A. That's correct.

01:52:11PM 5 Q. And you would agree that a sworn statement might be more
6 reliable than an unsworn statement, correct?

7 A. I looked at their sworn affidavits.

8 Q. And we also know that the police department report is, at
9 least to some degree, corroborated by what was in those sworn
01:52:30PM 10 affidavits. When Sergeant Maxey writes down that Mr. Ford
11 says such and such, sure enough, we look at Mr. Ford's sworn
12 affidavit; and it says that same thing. So, doesn't that
13 corroborate the reliability of some of the things in the
14 police report?

01:52:43PM 15 A. Sure. It may, yes.

16 Q. But you still didn't consider that?

17 A. I did not.

18 Q. And you still consider it appropriate practice for
19 someone proclaiming that they are practicing forensic
01:52:53PM 20 psychology to discount those sources of information?

21 A. Yes.

22 Q. Doctor, did you know that Mr. Ford was presented as an
23 alternative suspect by the defense at trial but that his work
24 records provided the alibi for his whereabouts at the time of
01:53:15PM 25 the crime?

1 A. No, I did not know that.

2 Q. So, you weren't informed of that either?

3 A. No.

01:53:27PM

4 Q. Do you find Gladys to be a credible informant in this
5 case?

6 A. As much as the others, I guess.

7 Q. So, is that a, yes, I find her to be a credible
8 informant; and I am basing my conclusions on the data she
9 provided?

01:53:41PM

10 A. I didn't base my evidence solely on her statements. I
11 used the statements of herself and all of her sisters.

12 Q. Okay.

13 A. All of the affidavits in the record.

01:53:51PM

14 Q. But you did reply in part on the statements that Gladys
15 made?

16 A. Yes, I did.

17 Q. Even though the statements that she made were
18 contradicted by her own statements earlier in time?

01:54:02PM

19 A. Which statements? Are you talking about what was in the
20 police record or her statements about his behavior?

21 Q. Her sworn statement to the police admitting that she had
22 lied and given an incomplete account in her first sworn
23 statement, for example?

24 A. That may have been the case.

01:54:13PM

25 Q. It was the case, wasn't it? You read those sworn

1 statements here in court on Friday?

2 A. I read that she made two statements, yes.

3 Q. And you read that she said, "I didn't give the whole
4 story the first time I made a sworn statement."

01:54:25PM 5 A. Right. She stated that she left some things out. That's
6 correct.

7 Q. And she was actually impeached while she was testifying
8 here on Friday, wasn't she?

9 A. (No response.)

01:54:39PM 10 Q. She was impeached by some of the documents that we read
11 here on the stand today. She tried to act like she had no
12 idea what was in the box and she didn't give any gun and she
13 didn't have any idea about the gun, but she did, didn't she?

14 A. I'm not sure.

01:54:54PM 15 Q. So, if you are not sure, how do you know how much weight
16 to give the data that she provided to your conclusion?

17 A. I utilized the information describing not the events
18 surrounding the commission of the crime but Mr. Aldridge's
19 behavior that was corroborated by her sisters and other

01:55:11PM 20 individuals in terms of his delusions, his speaking about
21 spirits, the way that he behaved, whether or not he associated
22 with others, did he have friends, did he date. So, that's the
23 information that I used from the sisters that corroborated his
24 diagnosis.

01:55:25PM 25 Q. Was Mr. Aldridge a conduct disorder in youth?

1 A. By legal definition? Yes.

2 Q. How about by the DSM? He met the categories in the DSM
3 for being a conduct disorder youth, didn't he?

4 A. Yes, he does.

01:55:39PM 5 Q. And prior to whenever he developed his full-blown
6 schizophrenia, he was also an antisocial personality, wasn't
7 he?

8 A. No. A conduct disorder can lead to an antisocial
9 personality disorder, but then the diagnosis of schizophrenia
01:55:54PM 10 subsumes that. So, he cannot have a diagnosis of antisocial
11 personality disorder.

12 Q. But I'm talking about if we look at the portion of his
13 life leading up to him becoming a full-blown schizophrenic.

14 A. Right. I would say that --

01:56:07PM 15 MR. RYTTING: I'll object to relevance.

16 THE COURT: Overruled.

17 A. I would say that he meets the criteria for conduct
18 disorder, but the diagnosis of antisocial personality
19 disorder --

20 THE REPORTER: I'm sorry. You'll have to start over
21 and slow down, please. Meets the criteria?

22 A. Yes. I would agree that he meets the criteria for a
23 diagnosis of conduct disorder in his adolescence. The
24 diagnosis of antisocial personality disorder is typically
01:56:27PM 25 given to an adult after the age of 18.

1 BY MS. ODEN:

2 Q. Correct. And if we are talking about his life up until
3 but not including -- and I don't know how you want to phrase
4 it -- when he had a break with reality or when he became a
01:56:40PM 5 full-blown schizophrenic, prior to that, after the time --

6 A. It's my understanding that he entered prison at the age
7 of 17 or 18.

8 Q. Please let me finish my question to make it easier on the
9 court reporter. Okay?

01:56:52PM 10 So, I am talking about the portion of his life
11 up to but not including when he had the full break with
12 reality. You're saying the reason that you would not consider
13 him to qualify for a diagnosis of antisocial personality is
14 because he went to prison at the age of 17, as though that
01:57:12PM 15 stops his personality development at that point in time?

16 A. I didn't say that stops his personality development.

17 Q. Okay. So, don't you think given the pattern of his
18 criminal history and the pattern of his behavior, that once he
19 turned 18, even though he turned 18 in T.D.C.J. custody, don't
01:57:33PM 20 you think he met the diagnostic criteria for antisocial
21 personality?

22 A. No. I told you up to that point he met the criteria for
23 a diagnosis of conduct disorder. When you are in prison, you
24 aren't engaging in antisocial person -- you are in prison.

01:57:47PM 25 How can you evaluate at that point in time whether he's

1 engaging in other acts?

2 Q. Is it, then, your position that you have to be engaging
3 in the acts actively, currently engaging in the acts to
4 qualify for the diagnosis of antisocial personality?

01:58:03PM 5 A. No. You have to have a history of doing that. So,
6 conduct disorder can lead into adulthood; but it has to lead
7 into adulthood to then make the diagnosis of antisocial
8 personality disorder.

9 Q. So, the fact that they got him behind bars by the time he
01:58:17PM 10 was 17 is the only thing that kept him from becoming an
11 antisocial personality. What about sticking another inmate in
12 the face with a fork, you don't think that's a display of a
13 pervasive disregard for the rights of others?

14 A. It could be. It could also be related to delusional
01:58:36PM 15 behavior.

16 Q. Okay. So, all of his disciplinary problems while he was
17 in prison, you would -- you would account for that data not by
18 saying it was an example of antisocial behavior. You would
19 account for that data by surmising that it was a result of
01:59:04PM 20 delusions?

21 A. No. I can't argue that all of those things are related
22 to delusions. He has a history of conduct disorder as a
23 youth.

24 Q. Uh-huh. And what about --

01:59:14PM 25 A. That's irrefutable. I am not refuting that.

1 Q. And what about after he turned 18? What about his
2 disciplinary behavior in prison after he turned 18?

3 A. Yes. He has received disciplines for a number of reasons
4 while he was in prison.

01:59:27PM 5 Q. And would you account for that data as a symptom of
6 antisocial personality disorder or as a symptom of delusions?

7 A. I would not count it as a symptom of antisocial
8 personality disorder because he doesn't have a diagnosis of
9 antisocial personality disorder. I would say those could
01:59:41PM 10 potentially be antisocial behaviors or behaviors that could
11 result from delusional behavior.

12 Q. Okay. Is Mr. Aldridge a patient of yours?

13 A. No, he is not.

14 Q. And in your experience receiving training on forensic
02:00:02PM 15 issues at the seminar, did they explain why it is important to
16 distinguish between a forensic examinee such as Mr. Aldridge
17 versus a patient in a clinical setting?

18 A. Yes.

19 Q. And why is it that important?

02:00:18PM 20 A. Because I am not there to treat him or provide him with
21 information about his diagnosis. I am there for legal
22 purposes to help his attorney understand his presentation and
23 how that relates to his case and that the information is not
24 confidential, that it will be released to others involved in
02:00:36PM 25 the legal proceedings; and so, it will not be protected

1 information as it would if I saw a patient in a clinic or
2 hospital setting.

3 Q. So, it is important in some ways to change your
4 presentation and your conduct or your examination based on
02:00:52PM 5 whether the person is a patient or an examinee for a forensic
6 setting?

7 A. I'm not sure what you mean by "change my conduct."

8 Q. It is important that you say different things to them and
9 ask them different sorts of questions?

02:01:07PM 10 A. I have to inform them of the difference in the
11 assessment, who the records will be released to, the
12 difference in the confidentiality of the data that pertains to
13 the case; but I don't change the format in which I ask
14 questions.

02:01:21PM 15 Q. Dr. Quijano, we don't actually know the wording of the
16 questions that Dr. Quijano used, do we?

17 A. No. I only have his testimony that speaks towards that.

18 Q. And his testimony indicated that he did not ask questions
19 that started with "why."

02:01:39PM 20 A. Yes.

21 Q. And he asked directed questions to keep Mr. Aldridge on
22 track.

23 A. Yes.

24 Q. And from that you gather that they were leading
02:01:48PM 25 questions; is that right?

1 A. He gave specific examples -- two specific examples during
2 testimony of the questions that he asked to Mr. Aldridge.

3 Q. And what are those examples that you are focused on?

4 A. He said, "Do you understand that the DA is against you?"

02:02:04PM 5 And he said Mr. Aldridge said "yes."

6 He said, "Do you understand that your attorney
7 is for you?"

8 So, the answer to the question is inherent in
9 the question. That is a leading question.

02:02:15PM 10 Q. And those are the examples that you are focused on when
11 you decide that Dr. Quijano is asking leading questions?

12 A. Those are the questions that Dr. Quijano offered as how
13 he interviews a patient with schizophrenia, namely,
14 Mr. Aldridge, during his evaluation of competency to stand
02:02:34PM 15 trial.

16 Q. Is that a "yes," Doctor?

17 A. Can you ask the question again?

18 Q. I don't need to. Thanks.

19 Who is the best judge of what Mr. Aldridge was
02:02:46PM 20 saying during Dr. Quijano's evaluation, Dr. Quijano or you?

21 A. Dr. Quijano.

22 Q. And why is that?

23 A. He was present during the interview.

24 Q. You mentioned that -- that Mr. Aldridge is mentally ill
02:03:17PM 25 constantly but his symptoms are not necessarily constantly

1 present.

2 A. All of them, yes.

3 Q. Right. Is a person with schizophrenia incompetent
4 because they are always irrational?

02:03:45PM 5 A. I believe that the disease affects their rational
6 thought. In this case the severity of delusions does appear
7 to affect his rational thought.

8 Q. I'm not talking about this case. I'm asking you from
9 your psychological professional opinion.

02:04:02PM 10 A. Uh-huh.

11 Q. Is a schizophrenic always going to be incompetent because
12 they are always irrational?

13 A. Again, I can't say always. So, no, I don't think that
14 every patient with schizophrenia is incompetent. It depends
02:04:22PM 15 on the specific type of their symptoms --

16 Q. Okay. And is every schizo --

17 A. -- the nature of those symptoms and whether that affects
18 their rational thought.

19 Q. Is every schizophrenic always irrational?

02:04:33PM 20 A. No.

21 Q. So, some people with schizophrenia are not always
22 irrational?

23 A. I guess it depends on the degree to what you mean
24 irrational. Because the deficits they have in the disease,
02:04:48PM 25 their brain dysfunction causes impairment in their rational

1 thoughts and the functioning of their frontal lobe. And it
2 depends on the severity of those deficits what severe rational
3 thought is impaired.

4 Q. So, it depends on a case-by-case analysis, then?

02:05:02PM 5 A. Yes. And whether or not the patient has been medicated.

6 Q. So, is it your opinion that if a patient has not been
7 medicated, then they are necessarily incompetent?

8 A. No. But the odds go up tremendously.

9 Q. What are those odds? What is that correlation? I think
02:05:17PM 10 I asked you this earlier. Have you had a chance to look into
11 that?

12 A. No, I have not.

13 Q. Are you aware whether or not the literature distinguishes
14 between a correlation between untreated schizophrenia and
02:05:29PM 15 competency versus treated schizophrenia and competency?

16 A. I don't know the correlations.

17 Q. Okay. Prior to the crime, is there any evidence in the
18 record that Mr. Aldridge was paranoid about sexual assault by
19 a manager at the McDonald's?

02:05:49PM 20 A. State that again, please.

21 Q. Prior to the crime, is there any evidence in the record
22 that Mr. Aldridge was paranoid about sexual assault by
23 anybody, the manager or whatever, working at the McDonald's?

24 A. In his letter in 1989, there are statements of being
02:06:08PM 25 molested; but he does not specifically name anybody at

1 McDonald's.

2 Q. And I guess, last, what is your understanding of the
3 meaning rationally able to assist in their own defense? Is it
4 that -- is it the question -- is the question can the
02:06:33PM 5 defendant assist his attorneys; or is the question can the
6 attorneys assist the defendant, help him to understand, help
7 him to see the light, see their way of thinking on the case?

8 A. My understanding is that the client has to have an
9 ability to assist his attorneys in his own defense.

02:06:55PM 10 Q. Okay. So, if I understand what your perspective is, it's
11 not whether or not his attorneys can change his way of
12 thinking or help him see their perspective on the case. The
13 question is whether or not he is able to assist them in
14 preparing for his own defense?

02:07:18PM 15 A. Well, that would be part of it. The first prong on
16 competency is whether he has sufficient present ability to
17 consult with his attorneys to a reasonable degree of rational
18 understanding. So, "consult with" implies by directionality.

19 MS. ODEN: That's all for now. Thank you, Your
02:07:49PM 20 Honor.

21 THE COURT: All right. Thank you.

22 Mr. Rytting, anything else for this witness?

23 MR. RYTTING: Your Honor, I have no further
24 questions.

02:08:06PM 25 THE COURT: All right. You may step down, Doctor.

1 Thank you.

2 THE WITNESS: Do I just take these with me, all of
3 these?

4 THE COURT: I think they need to go back to whoever
5 gave them to you.

6 (Witness released)

7 THE COURT: All right. Mr. Rytting, do you have any
8 other witnesses?

9 MR. RYTTING: Your Honor, I am finished with my case
02:08:26PM 10 in this evidentiary hearing.

11 THE COURT: All right. Thank you.

12 MR. RYTTING: Except unless we need Dr. Mosnik for a
13 brief rebuttal.

14 THE COURT: All right. Okay.

02:08:40PM 15 Respondents, who is your first witness?

16 MS. HAYES: Dr. Allen.

17 THE COURT: All right.

18 MS. HAYES: Our second witness.

19 THE COURT: Dr. Allen, would you come forward,
02:08:47PM 20 please, and be sworn in.

21 (**THOMAS G. ALLEN**, witness, sworn.)

22 THE COURT: All right. Have a seat in the witness
23 chair, please.

24 **DIRECT EXAMINATION**

02:08:53PM 25 **BY MS. ODEN:**

1 Q. Go ahead and introduce yourself to the Court and tell us
2 what you do.

3 A. Thomas G. Allen, A-L-L-E-N. I'm a psychologist, and I
4 practice forensic psychology.

02:09:25PM 5 Q. Could you tell us briefly about your background and your
6 education, starting with that?

7 A. I have a Bachelor's degree in psychology from Western New
8 Mexico University. My Master's degree in psychology is from
9 Texas A&M University. My Ph.D. is in psychology from Texas
02:09:44PM 10 A&M at Commerce.

11 Q. And outside of your formal educational training, what
12 other types of training have you had in the field of forensic
13 psychology?

14 A. Well, as a part of getting a license, I have a year of
02:09:56PM 15 pre-doctoral internship through the forensic psychiatric unit
16 at Rusk State Hospital, a year of post-doctoral internship
17 that was through University Park Hospital in Tyler. And,
18 actually, that focused on neuropsychology. I took the
19 licensing exam and passed it and went into private practice in
02:10:20PM 20 1985. And, of course, I routinely keep up with continuing
21 education as required by the board of examiners.

22 Q. Does it matter if someone in your field has published
23 their own writings, been published in academic journals, et
24 cetera? Is that --

02:10:37PM 25 A. It is just a matter of personal preference in career

02:11:03PM 1 goals. Actually, most psychologists work in institutions;
2 prisons, universities, et cetera, drug companies, medical
3 schools. And most research is done by academic psychologists
4 in facilities like universities, prisons. My practice has
5 been always clinically directed.

6 Q. Have you been published?

7 A. I participated with a psychologist out of Rutgers and a
8 physician in Tyler on one publication that had to do with
9 nicotine some time ago. And I published my dissertation.

02:11:24PM 10 That's it.

11 Q. Do you -- as a forensic psychologist, do you routinely
12 take cases for the defense or for the State or both?

13 A. My forensic practice since -- well, I guess since the
14 beginning, I mean, in criminal cases I'm often court-appointed
02:11:51PM 15 to do competency exams, sanity exams, risk assessments even.
16 And then sometimes I'm hired by prosecutors or defense
17 attorneys in cases to do various things; to consult, to
18 provide opinions, things like that.

19 Q. And, again, how long have you been practicing as a
02:12:11PM 20 forensic psychologist?

21 A. Really since the beginning in '85. A lot of my practice
22 then was focused on behavioral medicine. I saw a lot of
23 medical consults with consultations for various -- mainly
24 surgeons, neurosurgeons, orthopedic surgeons. But I would get
02:12:28PM 25 involved because of that in personal injury litigation. But I

1 started seeing probably criminal cases by '87.

2 Q. Is it important to be able to cite textbooks that you
3 rely on on a regular basis?

02:12:51PM

4 A. Yeah, either primary or secondary sources. I think it is
5 good to know a lot of the research foundations, you know, for
6 what you are doing.

7 Q. Off the top of your head, do any textbooks come to mind
8 that you think are influential or reliable in this field?

02:13:08PM

9 A. Well, yeah, there's quite a few. I mean, there's a lot
10 of research articles that I read to keep up with the field;
11 research on various topics, whether it's risk assessment,
12 competency, sanity issues.

02:13:26PM

13 I brought some secondary sources with me, like
14 the work by Richard Rogers on malingering and deception,
15 Handbook of Forensic Psychology, is an important source.
16 Actually, the little textbook that Dr. Quijano wrote a chapter
17 in is very handy. I believe it was called Forensic Psychology
18 For the Journeyman Clinician. He mentioned it in his
19 testimony.

02:13:44PM

20 Q. What is forensic psychology?

21 A. Simply the application of behavioral science, the
22 knowledge and the behavioral science of psychology within the
23 legal system.

02:14:00PM

24 Q. Do you rely on scientific principles when forming your
25 opinions?

1 A. Yes, ma'am. That's what we are supposed to do wherever
2 you can. There's some arenas where science doesn't fit very
3 well. For example, I still don't know of a good scientific
4 definition for what a good parent is.

02:14:15PM 5 Q. Sure. Did you agree with Dr. Mosnik's brief description
6 of data and hypotheses and conclusions?

7 A. Well, not really.

8 Q. How so?

9 A. Well, I would give a much more crisp explanation.

02:14:36PM 10 Q. Go ahead and explain how you use scientific principles to
11 reach a conclusion.

12 A. Any time you are evaluating someone, whether you're a
13 behavioral scientist or a rocket scientist, it is about
14 forming preliminary hypotheses, collecting data to see what is
02:14:52PM 15 supported and what is not supported. And you often have to be
16 willing to readjust your hypotheses given this new
17 information, and you keep refining it until you get to
18 something that you can have some confidence in your
19 conclusions. So, it is a very systematic process.

02:15:11PM 20 Q. And is it important to end up with a conclusion that
21 accounts for as much of the data as possible as simply as
22 possible?

23 A. That's the idea. You want to account, when you come to a
24 conclusion, for as much of the data as you can but in the most
02:15:31PM 25 parsimonious fashion that you can with the simplest

1 explanation that accounts for the most data.

2 Q. Okay. Can you tell us what is meant by "hindsight bias"?

3 A. In the field of behavioral science, there have been

4 several forms -- I'll call it numerous forms of human

02:15:56PM 5 perception that tend to be biased that interfere with that

6 process of a scientific systematic approach that will lead to

7 a nice, clean, reliable conclusion.

8 Hindsight bias is, I guess in a word,

9 Monday-morning quarterbacking where, you know, by -- you know,

02:16:16PM 10 Friday comes along and everybody is looking for the Cowboy

11 game; and they are really going to kick it in the playoffs.

12 And then Monday morning when they've lost 30 to nothing

13 because of some Pacman Jones stuff, you are claiming: I knew

14 all along that they were going to lose, you know, in

02:16:34PM 15 hindsight.

16 So, any time you are looking through data, when

17 you are looking, I guess, backwards in a sense and you are not

18 really clear on what your original hypothesis was, which is

19 the Cowboys are going to win 20 to nothing and they get beat

02:16:53PM 20 20 to nothing, rather than accept your original hypothesis

21 which was wrong, you claim you're right.

22 Q. Okay.

23 A. That's hindsight bias.

24 Q. And are you familiar with the concept of confirmation

02:17:06PM 25 bias?

1 A. Yes.

2 Q. Is that related? How is --

3 A. In a sense all biases are related because they mess that
4 process of data collection and clean hypotheses testing. With
02:17:19PM 5 confirmation bias, you fall into a habit of making a
6 presumption, making an assumption, accepting it as true and
7 then you don't question that original assumption and you spend
8 all of your time collecting data to prove your original
9 assumption, which was false to begin with.

02:17:42PM 10 I use the same stupid analogy where, you know,
11 I am convinced the Cowboys are going to the Super Bowl; and I
12 list all of these reasons. I look for all of the evidence
13 possible that they are going to go to the Super Bowl; and I
14 never look at the reasons they can't make it, like Pacman
02:18:02PM 15 Jones. I ignore that.

16 Q. Okay. And are these concepts -- hindsight bias,
17 confirmation bias -- discussed in the literature of your
18 field?

19 A. Yes, ma'am. There's a huge article on it, and I can't
02:18:12PM 20 remember the name of the author. But in a great secondary
21 text is a three-volume work by Ziskin & Faust -- that's
22 Z-I-S-K-I-N and Faust, F-A-U-S-T -- where the original
23 research is reviewed and critiqued, and it is one of the best
24 secondary sources of information on the topic.

02:18:38PM 25 Q. What was your role in this case, in Mr. Aldridge's case?

02:19:06PM 1 A. I was hired by Kathryn Hayes with the AG's office, and in
2 summary she said -- laid out the legal issues for me, which in
3 a sense I don't remember the technical/legal terminology. But
4 she wanted me to look at Dr. Quijano's work and basically
5 grade his paper.

6 She wanted me to look at Dr. Mosnik's work and
7 help her understand it because she said frankly she was
8 confused by what it was all about.

9 She wanted me to evaluate Mr. Aldridge, the
02:19:22PM 10 petitioner, to see if I could make sense of issues, possibly a
11 variety of them -- competency in 1990, for example; sanity in
12 1990 -- and whatever insights I could provide her about his
13 current mental function at that time.

14 Q. Are you aware of what schizophrenia is?

02:19:45PM 15 A. Yes, ma'am, I am.

16 Q. Okay. And based on what you've already said, you are
17 well aware of competency to stand trial and sanity?

18 A. Yes, ma'am.

19 Q. Are those evaluations you do frequently or infrequently?

02:19:56PM 20 A. Very frequently.

21 Q. And in your training and your experience, have you come
22 across people with schizophrenia frequently or infrequently?

23 A. Yes, ma'am. I really think I should point out I was
24 the -- I worked at Rusk State Hospital for a total of
02:20:13PM 25 seven years. At one point I was the director of the chronic

1 psychiatric unit that was 150, 200 patients, all
2 schizophrenics, chronic schizophrenics.

3 I was the admitting psychologist on the
4 admissions and diagnosis -- the admissions and diagnostic unit
02:20:32PM 5 for several years where everyone admitted civilly to include
6 voluntarily to the hospital. After the admissions nurse dealt
7 with them, I did the initial examination, the initial
8 diagnostic interview with them; and I, in a year, saw hundreds
9 of psychotics.

02:20:52PM 10 And, of course, in my work at the maximum
11 security unit, we probably processed -- and I was a part of
12 processing, the year that I was up there, at least 800
13 patients who had been criminally committed for one process or
14 another.

02:21:06PM 15 Q. Did you -- were you able to review all of the
16 respondent's exhibits in this case?

17 A. Yes, ma'am, except the ones that were learned about
18 Friday. I haven't seen any new material since then.

19 Q. Okay. Did you get a chance to examine Mr. Aldridge
02:21:30PM 20 preparing to come to testify in this case?

21 A. No, ma'am.

22 Q. And why not?

23 A. Well, he was informed that I was going to go to evaluate
24 him. The assistant warden -- I can't remember his name --
02:21:47PM 25 told me that a document had been delivered to him regarding

1 that. But he wouldn't cooperate with my evaluation, so I
2 couldn't evaluate him.

3 Q. When you say he wouldn't cooperate with your evaluation,
4 did you have any interaction with him at all? Did you --

02:22:02PM 5 A. No, ma'am. He wouldn't come out of his cell. That's
6 what I was told.

7 Q. Okay. Did you speak to anybody else besides Kathryn
8 Hayes and myself about this case?

9 A. Mr. Davis.

02:22:15PM 10 Q. Were you able to interview him?

11 A. On the -- by telephone, yes, ma'am, briefly. It was not
12 a long interview.

13 Q. And, of course, you were present here for the testimony
14 of Dr. Quijano and Mr. Davis and Dr. Mosnik.

02:22:29PM 15 A. Yes, ma'am. And Gladys Aldridge.

16 Q. Is it important to weigh someone's motive for testifying
17 or giving a certain statement when evaluating how to use the
18 data they give you?

19 A. Of course. We apply -- and it is a very subjective
02:22:49PM 20 thing; but we weigh the importance, the quality of testimony,
21 in the same fashion as any other kind of evidence.

22 Q. Did you see any special issues in credibility or motive
23 come up with any of the testimony that you heard or any of the
24 documents that you reviewed?

02:23:05PM 25 A. I mean, there were questions by both sides, the lawyers

02:23:34PM 1 on both sides, you know, questioning the utility of different
2 evidence and the testimony. Of course, I think Mr. Davis'
3 testimony was important to me. Gladys Aldridge's testimony
4 was important in a fashion. I weighed it -- in terms of
5 reliability, I didn't give it as much weight as I would
6 Mr. Davis', for example, and certainly not as much weight as I
7 would give to Dr. Quijano.

8 Q. Okay. Let me ask you for your --

9 THE COURT: Do you have an objection?

02:23:45PM 10 MR. RYTTING: Yeah. I just object to the relevancy
11 of this testimony and the competency of the witness to be
12 judging, I guess, credibility before the Court.

13 THE COURT: Overruled.

14 BY MS. ODEN:

02:24:00PM 15 Q. I would like to get your reaction, if I may, to
16 Dr. Quijano's testimony, the portion in which he said, "If the
17 attorney Mr. Bates' testimony during punishment phase was
18 accurate and was representative of the majority of
19 Mr. Aldridge's communications with his attorneys, then he
02:24:23PM 20 would agree that Mr. Aldridge was not competent at the time of
21 trial."

22 A. Right. I mean, I'll paraphrase my understanding; that
23 clearly if you have got someone who is so delusional that you
24 cannot, at least the majority of the time, communicate with
02:24:45PM 25 them and get them to respond in a fashion that is important in

1 competency-type issues, then you would probably call them
2 incompetent.

3 Q. Was that your understanding of the data you were provided
4 by Mr. Davis and by Mr. Bates' testimony, that the majority of
02:25:05PM 5 the time Mr. Aldridge was not able to communicate in that
6 fashion?

7 A. No. I didn't see their testimony or Bates' testimony as
8 indicating that to be the case. I mean, I thought Mr. Davis
9 made it pretty clear that most of the time, you know, he
02:25:22PM 10 wasn't overtly hostile and was adequately responsive; and he
11 talked a lot about the guy having weird ideas. But there
12 didn't appear to be anything that was so intense and so
13 frequently intense that it was impairing his capacity to
14 cooperate and collaborate with his lawyers.

02:25:42PM 15 Q. What is your opinion of Dr. Quijano's process or the way
16 that he developed an opinion on Mr. Aldridge's competency to
17 stand trial and his sanity?

18 A. I mean, in essence, I didn't have a problem with it
19 because it looked so similar to what I do and what I see a lot
02:26:02PM 20 of psychologists do and what I've seen psychologists and
21 psychiatrists do over the years in terms of, say, coming up
22 with a competency opinion and a sanity opinion.

23 You know, in addition to background
24 information, as far as the exam goes itself, you're collecting
02:26:18PM 25 clinical input from the person; and you're basically doing a

1 mental status examination throughout that. And at some point
2 in your interview, you get into questions related specifically
3 to competency to stand trial; and he appeared to do that in
4 his exam.

02:26:37PM 5 Q. Are you familiar with --

6 MR. RYTTING: Your Honor, I do have an objection. I
7 don't believe this witness has an independent opinion about
8 Mr. Aldridge's competency to stand trial. My understanding of
9 his testimony is that he is just here to make -- to grade --

02:26:55PM 10 as he said, grade two papers. I believe that's something for
11 the Court to do and not this witness to come in and give a
12 professional opinion about the quality of the reports or the
13 exam in this case.

14 I don't know if he has a background for making
02:27:13PM 15 this type of decision -- judgment in the first place. Is he a
16 professor that is supposed to be grading these papers? I
17 don't understand the basis of his testimony -- of his expert
18 testimony if it is not going to be about Mr. Aldridge.

19 THE COURT: All right. Does this witness have an
02:27:32PM 20 opinion to express about Mr. Aldridge's competency to stand
21 trial in 1990?

22 MS. ODEN: Your Honor, at the deposition conducted
23 by Mr. Rytting and Ms. Hayes, he was asked his opinion of
24 Mr. Aldridge's competency; and he does have an opinion about
02:27:53PM 25 it. He was primarily writing his report to express his

1 opinion about whether or not Dr. Quijano's process was
2 adequate to achieve an accurate result. I do believe he has
3 an opinion about Mr. Aldridge's competency, but it is based on
4 the work that was done at the time of the trial.

02:28:14PM

5 MR. RYTTING: Based on the deposition, I think the
6 testimony now he is here basically to grade Quijano's -- the
7 two papers that's here to bolster -- here to bolster Quijano's
8 methodology. That's it. I don't see the independent position
9 coming forth. I disagree he came up with an independent

02:28:42PM

10 opinion based on his -- the deposition. In fact, he said he
11 could not because he did not examine the client.

12 THE COURT: All right. Here's my opinion on that.
13 I think it would be useful for me to know what this witness'
14 opinion is about the competency of Mr. Aldridge to stand trial
15 in 1990 and what that is based upon.

02:28:58PM

16 To the extent that he has criticism of either
17 Dr. Quijano or Dr. Mosnik and their procedures or he thinks
18 that they did a good job, I am going to take that into
19 consideration in the mix; but I don't think we need to spend a
20 lot of time on it because that's really my job, is to evaluate
21 those opinions.

02:29:16PM

22 MS. ODEN: Okay.

23 THE COURT: But to the extent that he has something
24 to offer on those, I'm happy to hear it; but I don't think we
25 ought to spend a lot of time on it. But I'm more interested

02:29:25PM

1 in knowing if he does have an opinion on competency in 1990,
2 what that opinion is, and what it is based on.

3 MS. ODEN: Yes, sir.

4 Judge, with that understanding I may change the
02:29:39PM 5 order of my direct around a little bit. There may still be
6 some questions dealing with his opinion about the procedure
7 itself.

8 THE COURT: All right.

9 BY MS. ODEN:

02:29:49PM 10 Q. Dr. Allen, when someone does a competency examination,
11 what is meant by "transparency" in terms of the report that is
12 produced?

13 A. To leave an adequate trail of evidence, to leave your
14 footprints of what you have done so that the Court has some
02:30:08PM 15 idea of what you did. You know, take enough notes so that
16 they know what questions you asked. If you didn't write down
17 the questions or you don't have a form that you use, is there
18 enough in the way of answers to reveal the question that you
19 asked. Keep your data so that the court has a -- so that in a
02:30:28PM 20 court of law people can track you.

21 Q. Okay. When you read Dr. Quijano's report, were you able
22 to glean enough information from it that you could basically
23 recreate questions that were asked and answers that were given
24 in terms of the competency examination itself?

02:30:49PM 25 A. Yes.

1 Q. Is there a standard format used by forensic psychologists
2 to conduct such an examination?

3 A. Are we talking now or in 1990?

4 Q. Well, let's say in 1990 first.

02:31:05PM 5 A. And the answer is yes. I mean, as part of your training,
6 whether you're coming out of a program in forensic psychology
7 or going to training seminars, there was an understanding of
8 this is what competency involves and these are the kind of
9 questions that you want to get answered in a competency

02:31:26PM 10 examination.

11 So, there was a lot of overlap -- as to what
12 psychologists in the field who did this regularly, there was a
13 lot of overlap in what they were doing and the kinds of
14 questions they were asking.

02:31:37PM 15 Q. And did you find adequate transparencies in Dr. Quijano's
16 report, or maybe this is just another way of saying the same
17 thing. Did you find adequate transparencies in Dr. Quijano's
18 report that you could basically get data from his report about
19 Mr. Aldridge's competency in 1990?

02:31:56PM 20 A. Yes.

21 MR. RYTTING: I object to the leading question.

22 THE COURT: I'm going to allow it. Overruled.

23 BY MS. ODEN:

24 Q. And describe what kind of information you were able to
02:32:07PM 25 gather.

02:32:21PM 1 A. Well, in his dialogue, when he got around to the part
2 that involved direct competency issues, you could tell from
3 his notations -- they weren't always in quotes, but he was
4 summarizing what the examinee was telling him sometimes in
5 quotes. It was clear that he was attempting to establish
6 whether or not the defendant had an adequate sufficient
7 understanding of what he was charged with and that he had that
8 understanding not just a factual but a rational level. Is it
9 a felony, for example? You know, are you facing the death
02:32:41PM 10 penalty, kinds of things?

11 MR. RYTTING: I'm going to have to renew my
12 objection. Dr. Quijano is the person who is in a position to
13 talk about what he was doing in that exam at that point, and
14 he is making guesses about about what Dr. Quijano had in mind
02:32:58PM 15 and what he asked.

16 THE COURT: All right. Let's just --

17 MS. ODEN: It's the basis for his opinion, Your
18 Honor.

19 THE COURT: All right. All right. I'll allow it.

02:33:06PM 20 A. It was clear from his examination that he was -- I
21 believe I was still answering.

22 BY MS. ODEN:

23 Q. Please. Go ahead.

24 A. -- that he was appraising whether or not the defendant
02:33:16PM 25 could appraise the functions of various courtroom

1 participants. It was those kinds of questions that in my
2 opinion were adequately outlined in his report that reflected
3 he was indeed doing a competency examination.

02:33:33PM 4 Q. And since Mr. Aldridge was unwilling to cooperate with
5 you in a more current evaluation, were you able to get that
6 kind of information, for example, from Dr. Mosnik's report
7 since Mr. Aldridge was cooperative with Dr. Mosnik?

8 A. I just saw nothing in Dr. Mosnik's report that gave me
9 any indication -- and there's no evidence of competency
02:33:54PM 10 examination. There was lots of evidence about neuropsych
11 data, but nothing related to competency that showed a
12 comprehensive exam had been done.

13 Q. Is it possible to retroactively assess someone's
14 competency?

02:34:10PM 15 A. I am going to answer that is two-fold at least. I can't
16 clinically examine you today on competency issues and
17 automatically assume that makes you competent 10 years ago or
18 20 years ago. I can't do that. If I have enough data
19 historically, I can use that data to reach a reasonable
02:34:36PM 20 conclusion about your competency 10 years ago or 20 years ago,
21 if I have got enough data about your mental functioning. I
22 might have data in there that shows me, well, you knew what
23 your Miranda rights were, for example.

24 I can even ask you questions today about
02:34:54PM 25 20 years ago and maybe get some insights as to whether or not

1 you were competent. It would not be a solid. If you can't
2 remember a lot of things, for example, which a lot of us don't
3 remember yesterday very well, it is going to impair or distort
4 some of that information.

02:35:15PM 5 So, I can give you a reasoned opinion and --
6 also with some caveats that the opinion, you know, is weaker
7 because of the absence of A, B, or C. But, yeah, you can give
8 an opinion. It may not be as good or solid.

9 Q. Is it important -- for example, if you had been able to
02:35:38PM 10 test Mr. Aldridge or to examine him for his competency, would
11 you have administered tests of his cognitive abilities or
12 neuropsychological tests to reach a conclusion about his
13 competency?

14 A. Current?

02:35:53PM 15 Q. Current.

16 A. You just in general don't have to administer all those
17 things to perform a competency exam. You administer whatever
18 tests you need to administer to answer the questions that you
19 need to address.

02:36:13PM 20 If you're determining in your exam, for
21 example, that -- you know, I ask this person what they were
22 charged with and I know factually they're charged with, say,
23 vehicular homicide and they're telling me that they were
24 jaywalking, I've got to account for that discrepancy. Are
02:36:32PM 25 they pulling my leg, or do we have some kind of bizarre memory

1 problem going on or some mental disorder? So, I might come up
2 with a test to account for that discrepancy.

3 But did I go in and give you a rash of 10 or 15
4 or 20 tests that have nothing to do with the legal question,
02:36:51PM 5 that's a waste.

6 Q. Is it necessary to determine, for example, whether
7 Mr. Aldridge has schizophrenia in order to determine whether
8 or not he was competent in 1990?

9 A. It is not his schizophrenia -- the answer is no, I mean,
02:37:09PM 10 because it is not his schizophrenia, per se, that makes him
11 competent or not. The issue is: Is he or is he not
12 competent; and if he is not, how do you explain it? Why not?
13 What specifically about him makes him incompetent in terms of
14 the two factors and in terms of getting into the specifics of,
02:37:30PM 15 say, you know, multiple questions relating to those two
16 factors?

17 Q. Based on the testimony that you heard here and the
18 documents that you reviewed, including Dr. Quijano's report
19 and statements of other doctors and things like that, were you
02:37:47PM 20 able to form an opinion whether or not Mr. Aldridge was
21 competent to stand trial in 1990?

22 A. Yes.

23 Q. And what is that opinion?

24 A. It appeared to me that he was competent to stand trial in
02:38:00PM 25 1990, based on the records that I saw, my conversation with

1 Doug Davis and Quijano's report. That appeared to me to be
2 the most parsimonious conclusion.

3 Q. And having heard additional testimony by Mr. Davis and
4 Dr. Quijano and considering some of the perspectives of
02:38:25PM 5 Dr. Mosnik presented in this hearing, has your opinion on
6 Mr. Aldridge's competency in 1990 changed?

7 A. No, ma'am.

8 Q. Considering all that data, again, were you able to form
9 an opinion on Mr. Aldridge's sanity at the time he committed
02:38:41PM 10 the offense?

11 A. Yes, ma'am.

12 Q. And what is that opinion?

13 A. That he was sane at the time of the crime.

14 Q. So, how do we account for all the data that we hear so
02:38:55PM 15 much about, of all these different explanations and delusions
16 and hallucinations and voices in his ear? How does all that
17 fit in?

18 A. There are two patterns in a case like this that you
19 actually have to understand. One is the person -- the
02:39:17PM 20 examinee's history or criminal pattern of behavior, and second
21 is their psychiatric history or their psychiatric pattern of
22 behavior. For example, in assessing sanity at the time of a
23 crime, the approach is to get everything you can, evidence
24 wise, to tell you what was going on at that time. Are there
02:39:50PM 25 any collateral witnesses, any witnesses, any fingerprints,

1 whatever forensic evidence you can get your hands on?

2 You also are interested in anything pretty
3 close to before the time of the crime to indicate mental
4 status, motive, intent, et cetera, and immediately after the
02:40:12PM 5 crime. So, you have this one, two, three, picture of present,
6 past, and post crime and what in that picture, evidence wise,
7 tells you whether or not that person knew of the wrongfulness
8 of his conduct.

9 Q. So, let's talk about the case here. What did you see in
02:40:39PM 10 the pre-crime period, of the evidence that you reviewed, that
11 indicated that Mr. Aldridge was sane at the time he committed
12 the offense?

13 A. I thought it was very telling that you have someone with
14 a criminal history that goes back to age 14, several days
02:40:58PM 15 before the capital murder buying a gun, lying on the form that
16 he had to fill out -- you know, name, address, date, whatever
17 is on that form -- which requires some degree of rationality,
18 lying that he was not a convicted felon. And I got no
19 evidence that indicates that at that time he was showing a
02:41:25PM 20 psychotic level of behavioral disorganization, battling at the
21 counter, not able to count money or whatever. He was able to
22 purchase that gun in an adequately rational and coherent
23 state. I will put it that way.

24 Q. What about the time of the crime itself, in terms of
02:41:47PM 25 either his criminal history or his psychiatric history, told

1 you that he was sane at the time he committed that offense?

2 A. When it comes to the issue of sanity, if you have -- if
3 you are dealing with a crime scene that looks like or fits
4 into a history of criminal activity that this person has been
02:42:12PM 5 engaged in before, which is exactly what we have here --

6 MR. RYTTING: I'm going to object to this witness'
7 expertise to talk about patterns of criminal activity. I
8 don't believe he is qualified to do so or that they have
9 qualified him to make statements about this as a forensic
02:42:32PM 10 scientist. I'm not even sure there is a forensic science that
11 addresses these patterns of criminal activity or profile,
12 whatever it may be.

13 THE COURT: All right.

14 MS. ODEN: Judge, any lay witness can see that
02:42:44PM 15 there's a pattern of robberies and assaults in Mr. Aldridge's
16 life. I don't think you have to be an expert to see that.

17 THE COURT: Overruled. I'm going to allow it.

18 A. In fact, as Phil Resnik points out in his chapter, any
19 time you are dealing with sanity at the time of a crime that
02:43:08PM 20 fits the same criminal pattern as before, then the likelihood
21 that you are dealing with a sane criminal act goes up
22 considerably. And that's what we have here. In addition,
23 then you have after -- I mean, there's more I could say about
24 the crime scene and that kind of behavior, but --

02:43:36PM 25 BY MS. ODEN:

1 Q. Well, let me ask you specifically about that. Was
2 there -- was there anything perhaps in statements of other
3 people that had talked to Mr. Aldridge or police records,
4 anything about the scene of the crime that indicated to you
02:43:50PM 5 that Mr. Aldridge knew what he was doing was wrong at the time
6 that he was committing the offense?

7 A. Yes.

8 Q. What did you see?

9 A. Well, the statements and interactions with family
02:44:01PM 10 afterwards were very telling. He flees the scene with the
11 money. His interactions with Gladys, you know, there are
12 later statements by Mr. Ford, the nephew -- or nephews, all
13 indicated that he knew darn well that he had killed someone,
14 he had committed robbery, and he had a conscious intent and
02:44:32PM 15 plan to flee, I mean, that he knew what he had done is wrong.

16 Q. Did he do anything, to your knowledge, at the scene to
17 prevent his identity from being connected to the crime scene?

18 A. If I could qualify it, the answer is yes. And when you
19 see these complex mental symptoms presented to explain a
02:45:01PM 20 crime -- and I mean complex mental symptoms with
21 hallucinations on various levels and delusions on various
22 levels -- when, in fact, if you simply look at it in terms of
23 the past criminal history, you have to ask the -- I had to ask
24 myself the question: Was I committing this crime because of
02:45:22PM 25 this psychosis excuse I was using after I was arrested, or did

1 I make the guy open the safe so my fingerprints wouldn't be on
2 it?

3 And when you're looking at crime scenes
4 forensically, you have got to think along those lines. The
02:45:45PM 5 excuse used was a mental illness kind of an excuse. I felt
6 like it was over the top, not in terms of making it bizarre in
7 quality but over the top for other reasons that I hope to get
8 into. So, I think it was an excuse. I mean, he killed the
9 guy -- he said so later -- so he could get away clean, no

02:46:09PM 10 eyewitnesses. Secondly, he had the guy -- Ben Stone, I
11 believe -- open the safe so his fingerprints wouldn't be on
12 it.

13 Q. So, what are the reasons that you think his explanation
14 was over the top?

02:46:23PM 15 A. There were symptoms that I believe he was showing prior
16 to buying the gun, prior to committing capital murder -- the
17 family members have talked about them, for example -- such
18 things as T.D.C. sending people to follow him and the Nazis
19 and that kind of thing and even a letter in '89 that included,
02:46:55PM 20 among other things, being -- the eyes of children, molested by
21 children, and so on.

22 But if you notice at the time of his arrest --
23 and those police interviews are incredibly important in
24 understanding sanity and sometimes competency issues later.

02:47:12PM 25 So, you have got this -- Houston Police Department people

02:47:35PM 1 where he clearly appears to be -- the examinee clearly appears
2 to be aware of his rights. "I don't have to talk to these
3 guys. I have got a right to a lawyer." And nothing at that
4 time indicated any hallucination or delusion revolving around
5 his boss sexually assaulting him or ghosts on the roof or any
6 of that stuff that was later provided as his reason for
7 killing the victim.

8 And, clinically, if you assume that that must
9 have been -- if I assume that was a peak moment of his
02:47:55PM 10 psychosis, where it was so severe, so out of hand he killed
11 somebody and took the money, 10 days later, to assume that it
12 wouldn't be an issue, he wouldn't spontaneously report it to
13 police officers when given a chance, I see that as an
14 inconsistency.

02:48:18PM 15 Q. Is that inconsistency something that you have seen
16 presented previously with any schizophrenic patients or
17 schizophrenic examinees, the ability to have that big -- you
18 know, one day you are having this huge peak in psychosis and
19 10 days later you are completely over it?

02:48:37PM 20 A. I mean, it is possible, you know; but it doesn't usually
21 cycle quite that fast, especially in, you would assume, an
22 untreated schizophrenia. But it isn't just the ten days until
23 the time of arrest. It is the same day. None of that came
24 out with Gladys Aldridge or Mr. Ford or James Thomas. None of
02:49:02PM 25 that was evident in any of their statements, in any of their

1 accounts of interaction with him. So, on the day of the crime
2 up to the time of arrest, we have zero evidence of a florid
3 psychosis, which is atypical.

02:49:30PM 4 Q. We've heard some reference to the idea that if he really,
5 really, really believed those delusions, then he wouldn't be
6 competent. Is that psychologically true?

7 A. No. It is not automatic.

8 Q. What about if he really was truly schizophrenic at the
9 time, then he wasn't competent?

02:49:51PM 10 A. It is not automatic. I mean, there's studies that
11 demonstrate it.

12 Q. Okay. Are you familiar with anything in the literature
13 that correlates the presence of -- or having untreated
14 schizophrenia with being incompetent to stand trial?

02:50:15PM 15 A. Right. Basically the research says this. If you are
16 psychotic, which includes schizophrenia, the likelihood that
17 you are going to be incompetent is elevated. But there's
18 tremendous variation. Now, the studies range from a
19 correlation of .25 to around .45, where -- which means as

02:50:49PM 20 incompetency rises in some studies, 25 percent of the time
21 they're psychotic. So, it is not automatic at all. In fact,
22 it is one of those areas where there is some difficulty
23 merging the behavioral science with the requirements of the
24 law. They are often like merging water and vinegar. Okay.

02:51:20PM 25 And it is not always a perfect fit. But in terms of following

1 the standards and asking the right questions during
2 examination, it is often the case that people who are
3 psychotic are competent to stand trial.

02:51:38PM 4 Q. And that correlation -- or the range of correlations that
5 you just mentioned, does that mean assume treated, medicated,
6 schizophrenia?

7 A. It doesn't matter. The study was just are they psychotic
8 at the time or not. Some were on medicine; some weren't. But
9 they were all psychotic.

10 Q. Okay.

11 A. Because sometimes you could still be pretty crazy and be
12 medicated.

13 Q. Okay. Are schizophrenics avolitional in the sense that
14 they cannot control their behavior because of their delusions?

02:52:08PM 15 A. In general it is described as an avolitional disorder,
16 and the DSM talks about it. In assessing things like
17 competency, you have to -- you are making a judgment as the
18 extent to which volition remained intact, whether it is at the
19 time of the crime or it is remained in tact, say, during your
02:52:30PM 20 competency examination. But it is not that hat they are
21 without volition 24/7.

22 Q. If someone presents as being without control over their
23 behavior 24/7, what does the literature say, what does your
24 experience say, about that presentation?

02:52:56PM 25 A. They're either organic. It means something is wrong with

1 their brain that you're going to see on an MRI or some organic
2 test. Or they're extremely well coached malingerers,
3 well-versed malingerers.

4 Q. And --

02:53:11PM 5 A. And even then it is not that they are avolitional 24/7.
6 It is that -- because there are rest periods. You can't act
7 mentally ill every minute of every day. You get rest periods.
8 And during those rest periods, you will see their capacity for
9 volition present.

02:53:32PM 10 Q. Do you think that that is what is going on in this case?
11 Do you think -- do you think Mr. Aldridge is malingering
12 schizophrenia?

13 A. No.

14 Q. Do you think he is malingering at all?

02:53:45PM 15 A. Yes. But we call it exaggeration or fainting, and --
16 malingering depends on the circumstance -- definitions you
17 use. But the definition I use is that malingering occurs and
18 there's no symptom -- objective symptoms to account for what
19 they're showing you. It is totally fake.

02:54:09PM 20 Q. Okay.

21 A. But exaggeration or fainting -- you can have a mental
22 illness and exaggerate to avoid prosecution or exaggerate to
23 win a civil lawsuit, a civil suit. They are not incompatible.

24 Q. Okay. Is it forensically or scientifically reliable to
02:54:27PM 25 conclude that Mr. Aldridge was not competent in 1990 because

1 he had the same symptoms reportedly then that he does now, and
2 he's not competent now; therefore, he wasn't competent then?

3 A. False conclusion. I mean, it is a good example of
4 confirmation bias as well as a -- it is an illusory

02:54:52PM 5 correlation. Because you are showing a certain set of
6 symptoms, you can't conclude -- and you haven't really done a
7 competency exam, maybe; but you can't conclude the symptoms
8 now made him incompetent, you know, 16 years ago.

9 Q. Can you comment on -- we've heard something about
02:55:17PM 10 schizophrenia whether it waxes or wanes or whether it -- once
11 it starts, it's pervasive and constant to the same degree for
12 the rest of your life.

13 A. May I use a couple of examples? The first case I ever
14 dealt with, forensic psychiatric unit, Rusk State Hospital.
02:55:39PM 15 My Master's degree internship, my boss tells me to go evaluate
16 this guy. I mean, I am right out of school. I am an idiot.
17 I come back from the examination protesting as to why he's
18 incarcerated --

19 MR. RYTTING: I object on the grounds of relevance,
02:55:56PM 20 if I may. I don't know where this is going.

21 MS. ODEN: Judge, I think it's an example for him to
22 illustrate his answer.

23 THE COURT: All right. I'll allow it. Overruled.

24 A. The patient I was evaluating was sitting there reading
02:56:07PM 25 Einstein's Cosmology and listening to Johann Sebastian Bach,

1 and I didn't get that. He was a Ph.D. mathematician. He was
2 rational. He was coherent. He was logical. I could find
3 nothing that made him look schizophrenia until I go tell my
4 boss this story who was already familiar with the story who
02:56:30PM 5 returns me to the patient. Of course, my boss knew exactly
6 what button to push. And suddenly it was clear that this man
7 was incredibly delusional and very dangerous.

8 Yes, you can be schizophrenic. You can read
9 novels. You can drive cars. You can make change. You can
02:56:49PM 10 plan crimes. You can commit crimes. You can do all kinds of
11 things and be schizophrenic. You can have moments of clarity.
12 Some are more severe and have more of what I'll call diseased
13 moments, if you will.

14 Does it mean you're never capable of rationally
02:57:11PM 15 understanding anything ever or providing factual information?
16 And the answer is no. I mean, they often can do that. Is
17 there a lot of individual variation? Of course there is.
18 Some people are worse in the illness than others. Age of
19 onset makes a difference.

02:57:29PM 20 For example, if schizophrenia starts when you
21 are 45, you are more likely to have -- that's when you are
22 more likely to have like old factory hallucinations and
23 tactile hallucinations. You already hardly get those when the
24 onset is in the 20s. I think I answered your question.

02:57:47PM 25 Q. Okay. So, the logical question for me, then, is: Well,

1 what about when you're schizophrenia is motivated by or
2 spurred by contact with the criminal justice system? There
3 are some statements made by Mr. Aldridge that he feels this
4 whole system is out to persecute him and torture him as part
02:58:10PM 5 of a government experiment. So, how could he be competent to
6 stand trial when that's the button that gets pushed for him?

7 A. Because competency does not require some sort of pristine
8 state of mental health. You don't have to be -- and it
9 doesn't require that you have a law degree. It doesn't
02:58:41PM 10 require that you are a certified legal assistant. It doesn't
11 require that kind of knowledge or information. It requires
12 just a sufficient -- that's the word, sufficient -- present
13 ability to deal with proceedings rationally and factually.
14 Sufficient, not superior, sufficient. Sufficient, present
02:59:06PM 15 ability to cooperate and collaborate with your attorney.

16 That includes pretty simple things. It is not
17 a really high standard in Texas. I don't know about other
18 states. But it can include things like if I tell you to be
19 quiet, the person is quiet. You can't talk out in court. And
02:59:31PM 20 they comply. That's part of competency.

21 Q. How about Mr. Davis' testimony that he was able to
22 redirect Mr. Aldridge during conversation?

23 MR. RYTTING: I don't recall that testimony, Your
24 Honor. I believe that's a misstatement of the record.

02:59:49PM 25 THE COURT: All right. The record will speak for

1 itself on that.

2 BY MS. ODEN:

3 Q. Go ahead, Doctor.

02:59:57PM 4 A. I got that in my conversation with Mr. Davis and by
5 telephone, and it is an important issue. It is, in fact, in
6 my circles anyway, well-known that things like hallucinations
7 in schizophrenics decrease when they are distracted, when they
8 get involved in activities. And they often will report that,
9 you know, I like to mow the lawn because then the voices don't
03:00:23PM 10 bother me as much. Just as an example.

11 When asked about his ability to control his
12 apparent weird ideas, Mr. Davis began to talk to me in those
13 terms; and I then asked him specifically --

14 MR. RYTTING: Your Honor, I will object to the
03:00:42PM 15 hearsay.

16 THE WITNESS: Hearsay, I'm sorry.

17 MR. RYTTING: It would be one thing if he got -- if
18 Doug Davis hadn't testified here today, but here he is talking
19 about a conversation regarding the subject that he obviously
03:00:52PM 20 did not touch during this evidentiary hearing or testify to.

21 MS. ODEN: Judge, he is an expert. He can rely on
22 any admissible evidence if it's the type that are only relied
23 on by an expert in his field to form his opinion.

24 THE COURT: All right. Overruled.

03:01:07PM 25 A. He is redirectable, and that's not at all uncommon.

1 BY MS. ODEN:

2 Q. So, how does that fit into the idea of whether or not
3 schizophrenia waxes and wanes?

4 A. Because it does. It is a long-term disease or disorder
03:01:33PM 5 that waxes and wanes in the severity of symptoms that are
6 exhibited over time. It does not -- even though it is a
7 severe disorder, it's a psychotic disorder, it does not mean
8 that they are delusional every minute of every day any more
9 than you and I are thinking about our own personal religious
03:01:54PM 10 beliefs when we're driving our car.

11 Now, you can drive your car and not sit there
12 and feel like you have to reverse your, say, Christian
13 philosophy or something any more than someone who is
14 delusional. When they are driving a car, they are not
03:02:07PM 15 necessarily thinking about their paranoid delusions or that
16 the FBI is after them.

17 The same applies with the hallucinatory, the
18 perceptual distortions of schizophrenia. They are not there
19 all the time. Often they, for example, get worse only when
03:02:27PM 20 they're going to bed and they close their eyes, for example;
21 and it gets worse and disturbs their sleep. But if they're up
22 and moving around during the day, that's a part of the waxing
23 and waning that I think Dr. Quijano was talking about.

24 Q. Did you -- in reviewing the records or in conducting --
03:02:45PM 25 in receiving the data that you've received, did you see any

1 examples around, either, before or during or right after the
2 crime, behavior on Mr. Aldridge's part that indicated the
3 symptoms were waxing or waning?

4 A. What time frame?

03:03:03PM 5 Q. Before, during, or shortly after the crime.

6 A. You know, I don't have any evidence that just prior to
7 the crime, like December 29th, the gun buying, that any of
8 that was driven by hallucinations or delusions. I've got
9 nothing that says -- other than his report after his arrest,

03:03:22PM 10 that says the crime itself was driven by hallucinations or
11 delusions. The behavior doesn't fit that, in my opinion.

12 And then afterwards, the interactions with
13 family, I got nothing there. Even his interactions with the
14 police officers, HPD, he made some references to Allah, but

03:03:44PM 15 there was nothing about sexual assaults or ghosts on the roof
16 or --

17 Q. But Dr. Mosnik says that's because he wasn't specifically
18 questioned by those people about those mental ideas?

19 A. Well, here's my problem with that. Why is it you got to
03:04:01PM 20 specifically question him to get a symptom? When Quijano
21 talks to him, he starts spewing all these symptoms intensely,
22 voluntarily, with no apparent need for specific questions?

23 And that appears to be the same case in the way I read

24 Dr. Mosnik's notes. You don't have to ask a specific question
03:04:29PM 25 in his case, apparently, for him talk a lot. He loves talking

1 about his symptoms.

2 Q. What about the argument that his explanations for the
3 crime, the Sufis and the Nazis and all that stuff must be true
4 because those ideas appear in writings of his before the
03:04:50PM 5 crime; and they appear in writings of his after the crime?

6 A. After arrest. I mean, there's an important distinction
7 to make there.

8 Q. Okay.

9 A. There was some writing -- the letter, for example,

03:05:04PM 10 January 6th, where he's talking about a lot of this stuff.

11 But nowhere in the letter is he saying he committed the crime
12 because of these delusions, that Ben Stone was sexually
13 assaulting him, and the ghost was telling him to kill her -- I
14 forget the details. That may not be an accurate

03:05:28PM 15 representation, but that -- I don't believe that was in the
16 letter of January 6th, three days after the crime.

17 Q. Is it possible that his schizophrenia, because it is
18 untreated or for whatever reason, has genuinely gotten worse
19 to the point where now currently, or in 2006 when Dr. Mosnik
03:05:47PM 20 evaluated him, that now he really is incompetent? Is that
21 possible?

22 A. It's -- no. It is possible. I mean, mental status could
23 deteriorate over time.

24 Q. But I thought schizophrenia was this permanent thing;
03:06:03PM 25 that once you get it, that's as bad as it is going to be.

03:06:32PM 1 A. No. Schizophrenia is just described as a long-term
2 disorder. If you read the DSM, there is a statement made in
3 there where -- because we don't know -- writers and
4 researchers in the field don't know, of course, there are
5 probably cases that totally go away; and they act like they
6 never happen. We can't say that never happens.

7 In general, it is a very severe disorder that
8 actually tends to begin gradually. There's a prodromal phase,
9 the acute phrase. And then over time, with chronicity, it can
03:06:52PM 10 last until death; and it tends to take on a deteriorating
11 course. The deterioration isn't just some sort of increase in
12 symptoms, like the hallucinations get worse. It is an
13 increase in the negative symptoms, where they more slovenly --
14 don't interact as much, stay more alone. And if you've ever
03:07:18PM 15 been to a state hospital and you've seen in the -- say the
16 chronic psychotic ward, you'll see a lot of those people
17 there. They are very burned-out schizophrenics.

18 Q. Did you see any indication in the T.D.C.J. records that
19 you reviewed, specifically around the time that he had first
03:07:32PM 20 been admitted to death row, that indicated that he may be in a
21 waxing or a waning phase?

22 A. Well, clearly, there was an intake eval I believe by a --
23 I'm not sure if it was a social worker or a counselor or a
24 psychologist. I'm not sure. And they documented the apparent
03:07:58PM 25 delusion beliefs and distorted perceptions and so on. But

1 clearly they also documented statements. They clearly were
2 pretty rational and coherent in their nature and indicated
3 that he certainly wasn't in any kind of -- just totally
4 irrational state.

03:08:16PM

5 I mean, he started talking about -- that, you
6 know, his lawyers had a doctor see him. I assume Quijano.
7 But they messed up. They didn't have Quijano testify, and
8 that gave him grounds for an appeal. That's pretty rational
9 stuff. I mean, it fits in also with his maybe paranoid
10 nature, but it's also rational in that context.

03:08:40PM

11 MS. ODEN: For the Court's reference, that's
12 Respondent's Exhibit 25 at Pages 93 to 95.

13 BY MS. ODEN:

03:09:01PM

14 Q. You were present during Dr. Mosnik's testimony this
15 morning.

16 A. Yes, ma'am.

17 Q. And you were present when she and I read through a lot of
18 entries in the Houston Police Department records regarding
19 different things that Mr. Aldridge had said pre arrest and
20 post arrest.

03:09:15PM

21 Do you have any comment to make on that data
22 and how it plays into the hypothesis of whether or not he was
23 competent and sane?

03:09:32PM

24 A. Well, the statement to Houston Police, if I can start
25 there, clearly indicated he was aware of his right to remain

1 silent and his right to an attorney. That's a competence
2 issue right there. It was present January 13th, 1990, two --
3 which would be about two and a half months before Quijano saw
4 him, evaluated him.

03:09:56PM 5 Also at that time, the absence of his psychotic
6 excuse for the crime that seemed to emerge later when he had
7 more time, you know, to think about it, was absent on
8 January 13th when he was talking to the policemen. And those
9 police observations are critically important when I'm

03:10:18PM 10 assessing sanity. If I can get police statements close to the
11 time of the crime, that is good stuff.

12 Q. Did you independently consider all the data available to
13 you when you were making your opinion in this case?

14 A. Say that again, please.

03:10:38PM 15 Q. Did you independently consider the data available to you
16 when you were forming your opinion in this case, or did you
17 rely on Dr. Quijano's opinion to form your own opinion?

18 A. Well, I was analyzing and assessing his opinion. So,
19 yeah, I formed my own opinion based on as much information as

03:10:58PM 20 I had available to me, which was considerable.

21 Q. Doctor, is there any question that I have asked that
22 isn't clear or you feel like you haven't had a chance to fully
23 answer because I'm not phrasing it the right way? Anything
24 you may want to add that I may have cut you off on?

03:11:36PM 25 A. I believe I made my position clear on the issue of

1 competence -- and I didn't mean to -- maybe I misstated it
2 when I was trying to describe my role, but I thought I had
3 made it clear that Ms. Hayes wanted to know what I thought
4 about the guy's competency in 1990. So, obviously, I was
03:11:57PM 5 going to have an opinion on that issue.

6 I can't think of anything right now, ma'am,
7 so...

8 MS. ODEN: No other questions at this time.

9 THE COURT: All right. Let's take an afternoon
03:12:06PM 10 break for about 20 minutes. Reconvene at 3:30. And I do
11 expect us to be through by 5:00, if not earlier.

12 MR. RYTTING: Yes, Your Honor.

13 THE COURT: Okay.

14 (Break)

03:37:19PM 15 THE COURT: All right. Mr. Rytting?

16 MR. RYTTING: Yes.

17 **CROSS-EXAMINATION**

18 **BY MR. RYTTING:**

19 Q. Dr. Allen, you evidently have been doing a lot of reading
03:37:25PM 20 since in between your deposition and now. Is that fair to
21 say?

22 A. I have read some more of the file.

23 Q. Isn't it true at your deposition that you read -- when
24 you were asked about journals and texts on schizophrenia, you
03:37:41PM 25 couldn't name any?

1 A. On schizophrenia, right. I hardly ever read on
2 schizophrenia. These are forensic psychology texts I was
3 referring to.

03:37:49PM 4 Q. Okay. So, you hardly read about schizophrenia. In fact,
5 you are probably not even qualified to even make a diagnosis
6 of schizophrenia, are you?

7 A. Well, the board of examiners would disagree with you on
8 that.

03:38:00PM 9 Q. But you believe the field hasn't changed much in
10 20 years. Did you not say that in your deposition?

11 A. From my point of view. I mean, I don't know how long
12 DSM-IV has been out, but there hasn't been a whole lot of
13 breakthrough since that was published.

03:38:19PM 14 Q. And, in fact, you couldn't name a program or any -- you
15 know, university program or any, say, nationally known figures
16 in the field, could you?

17 A. I don't recall you asking me about any programs, but I
18 couldn't remember any author's names regarding schizophrenia
19 that I had read.

03:38:30PM 20 Q. And when it comes to the pharmacology that deals with
21 schizophrenia, the drugs that are administered, you didn't
22 know how those worked?

23 A. Yeah. I couldn't tell you the specific actions like,
24 say, of an old tranquilizer like Thorazine or anything like
03:38:49PM 25 that.

1 Q. Or what part of the brain was particularly affected.

2 A. Probably not without some refresher reading.

3 Q. In fact, what you said in the deposition, "Well,
4 everything is connected, the whole thing."

03:39:04PM 5 A. That's true. Every part of the brain is connected to
6 every other.

7 Q. Now, you said you relied heavily on certain types of
8 information. And I would like to first turn to the police
9 reports, and you extol their reliability, I guess, or validity
10 for your type of investigation; is that correct?

11 A. Yeah. Police reports can really help you the closer they
12 are to the crime.

13 Q. And respondent has already alluded to what's numbered
14 HPD060, which is, I believe, part of your Exhibit 17. I'd
03:40:10PM 15 hate the record to be confused, but I believe that's so.

16 MR. RYTTING: May I approach the --

17 THE COURT: You may.

18 MR. RYTTING: -- the witness?

19 BY MR. RYTTING:

03:40:25PM 20 Q. And would you read the interview with Garfield Aldridge.
21 Have you seen that before?

22 A. (Witness reading.) Is this the date of arrest? I don't
23 see a date on this.

24 Q. Have you read it before?

03:41:16PM 25 A. Yes.

1 Q. And doesn't it say here that the suspect was asked about
2 the murder and robbery at the McDonald's joint. Garfield then
3 went into a lengthy speech about his duty to Allah and his
4 holy journey of which he needed to make?

03:41:36PM 5 A. Yes, sir.

6 Q. And this isn't a lengthy account of that speech, is it?

7 A. No, sir.

8 Q. And we have no idea what he said to the police from this
9 report, do we?

03:41:51PM 10 A. Well, there was no mention of being sexually assaulted by
11 Ben Stone. I thought that was important.

12 Q. Well, you don't know if there was any mention of being
13 assaulted by Ben Stone from this, do you?

14 A. There was no mention in the report of being assaulted by
03:42:02PM 15 Ben Stone, which I assumed would have been a salient piece of
16 information that I assume the defendant at that time would
17 have made.

18 Q. Why would you assume that?

19 A. Because he is supposed to be psychotic and that was
03:42:16PM 20 supposed to be his reason for killing the guy.

21 Q. How do you know that that didn't come up? Who is making
22 a determination about what salient is? Mr. Aldridge or the
23 police?

24 A. Me. Me.

03:42:27PM 25 Q. No. In making this report, who is making the

1 determination of --

2 A. What goes into the report would be the police officer.

3 Q. And what they've certainly determined is that there was a
4 lot -- in fact, a lengthy speech that was not salient.

03:42:37PM

5 A. About Allah. His hallucination or delusion about
6 Ben Stone was not listed in here. I agree with you. There
7 was a lengthy speech about Allah and his holy journey and
8 admitting to being there when Stone was killed.

9 Q. But we don't know if this went on for, say, 15 or 20
03:43:00PM 10 minutes.

11 A. That's true.

12 Q. And we do know that his hallucinations about Allah and
13 his holy journey --

14 A. That's true.

03:43:04PM

15 Q. -- holy journey is intertwined with his other delusions
16 including delusions about killing Mr. Stone, don't we?

17 A. No.

18 Q. That isn't evident from Quijano's report?

19 A. The alleged delusion of being sexually assaulted by Stone
03:43:23PM 20 is all part of everything else; is that what you're saying?

21 Q. Well, haven't you read things in the record about not
22 only the murder but the case against him being involved --
23 being part of a plot or conspiracy against him to prevent him
24 from going to Iran and realizing his religious destiny. Have
03:43:49PM 25 you not read things like that?

1 A. I have read that, but I am having trouble with your
2 characterization. Are you talking about the case against him,
3 which has to do with competency and then his reason --

4 Q. I'm talking about --

5 A. Wait a minute.

6 -- and then about his reason for the murder?

7 Could you clarify that for me?

8 Q. No. I'm talking about -- okay. What I am trying to get
9 at is this: This is a police report that you -- of the type

03:44:09PM 10 that you say are reliable. It -- by its own statement, it
11 admits that it leaves out a lengthy speech of what may be
12 highly relevant information about his mental state. Is that
13 fair to say?

14 A. Well, probably not in that -- I agree with what you're
03:44:30PM 15 saying, that they didn't include a lot about this regarding
16 Allah. But when it came to the murder of be Ben Stone, they
17 report him saying nothing. There's no report his
18 acknowledging that he was there, that it had anything to do
19 with sexual assault; and I am making the assumption that:

03:44:50PM 20 Boy, that was a sure good chance for him to give them that
21 reason for killing the guy.

22 Q. Well, does he have any insight into his illness at all?

23 A. Probably.

24 Q. How do you know that?

03:45:00PM 25 A. He knows enough, for example, that after committing the

1 murder, he was hanging out with relatives. He was giving them
2 rational explanations for what he did. So, he must know
3 enough about his illness. And it requires some insight to
4 suppress your own symptoms at times, which they often do.

03:45:20PM 5 Q. You haven't examined this patient or defendant, have you?

6 A. No, sir. He wouldn't cooperate --

7 Q. So, you are making a diagnosis --

8 A. Wait a minute. He would not cooperate with me.

9 THE COURT: One at a time, please.

03:45:30PM 10 BY MR. RYTTING:

11 Q. So, you are making a diagnosis, essentially, a very
12 refined diagnosis, isn't it, about his --

13 A. About what? Which diagnosis are you referring to?

14 Q. Well, about his -- whether he is malingering and whether
03:45:41PM 15 he has insight into his illness, without having seen him?

16 A. It is not a diagnosis.

17 Q. You are providing a psychological opinion.

18 A. Right.

19 Q. Doesn't that usually require an interview of the patient?

03:45:54PM 20 A. No. It works like this, if you want me to explain it.

21 Q. And in your experience, how informed or conscious of
22 mental illness are police officers that are doing the
23 interviews?

24 A. In the bigger cities, Houston is one of them, they're
03:46:23PM 25 real aware of mental health issues.

1 Q. Since -- in 1990 were they? Is that the recent
2 development?

3 A. Yeah. Even in 1990, probably the Harris County Jail was
4 one of the biggest mental health providers around.

03:46:32PM 5 Q. I am talking about this was done by a police officer, I
6 believe.

7 A. Right. The big city police officers certainly have --
8 get more training than, say, a small town cop does on mental
9 illness issues.

03:46:45PM 10 Q. Did they have any training that you know of in 1990?

11 A. No, sir. I couldn't objectively tell you what the
12 training would be.

13 Q. So, you can't argue that it's a relatively recent
14 development they started using mental health units or mental
03:46:59PM 15 health training?

16 A. No, sir. No, sir.

17 Q. In fact, they don't have -- and, in fact, police officers
18 don't have the type of training, generally, to make a
19 determination about what is relevant, certainly

03:47:19PM 20 psychologically relevant, in a lengthy speech about Allah,
21 what is religious and what is complete delusion.

22 A. I don't know that they would be able to distinguish what
23 is delusion and what is, say, a malingered delusion or
24 anything like that.

03:47:38PM 25 Q. And you sit here and you said that you look at all the

1 evidence and you look at things fairly; is that correct?

2 A. Say what?

3 Q. You try to look at all the evidence, pro and con, and
4 make a fair assessment of it, correct?

03:47:55PM 5 A. Yeah.

6 Q. When you make your decision, right?

7 A. I try to gobble up as much information as I can.

8 Q. And you sat here in the courtroom while Dr. Quijano
9 testified; is that right?

03:48:03PM 10 A. Sir, you are going to have to get closer. I can't hear
11 you now.

12 Q. And you sat in the courtroom when Dr. Quijano testified?

13 A. Yes, sir.

14 Q. And Doug Davis testified?

03:48:09PM 15 A. Yes, sir.

16 Q. And Doug Davis plainly said that Randolph Bates'
17 testimony about the interactions between himself and
18 Mr. Aldridge was representative of the way that their
19 interactions went throughout the proceedings.

03:48:25PM 20 A. Yes, sir.

21 Q. There's no mistake about that.

22 A. That sometimes he was with them and sometimes he wasn't,
23 yes.

24 Q. No. That he was largely irrational throughout the
03:48:35PM 25 representation. And did you not hear Doug --

1 MS. HAYES: I need to object since I cross -- I
2 questioned Doug, and she wasn't here. I think the record will
3 speak for itself about the actual terms that were used.

4 THE COURT: All right.

03:48:50PM

5 BY MR. RYTTING:

6 Q. And, in fact, Doug said that the way that he recalled
7 Mr. Aldridge was -- mental state was similar -- and statements
8 about the crime was similar to what Dr. Quijano discovered
9 during his interview of Mr. Aldridge, correct?

03:49:05PM

10 A. Sir, I'm not getting your question. You mentioned
11 something about the crime.

12 Q. Did Doug Davis not testify on the stand that throughout
13 the representation, Mr. Aldridge's statements about the crime
14 were similar in nature to what Dr. Quijano discovered during
15 his interview of the client?

03:49:26PM

16 A. Yes.

17 Q. And does that not raise some concern in your mind that
18 Mr. Aldridge was incompetent to stand trial?

19 A. No.

03:49:39PM

20 Q. No concern at all?

21 A. Sir, you've just confused the question with sanity with a
22 question about competency.

23 Q. Why do you think there is -- okay. Strike that.

24 Is it your opinion that mental illness cannot

03:50:00PM

25 cause someone to be incompetent?

1 A. Yeah. Mental illness can be so severe that it can render
2 them incompetent.

3 Q. All right. And if someone is so delusional that they
4 think that what happened during the crime is what was stated
03:50:19PM 5 in the psychological interview of Dr. Quijano, is that not
6 some evidence that they're incompetent?

7 A. No, sir. It is more evidence of insanity at that point
8 than competency.

9 Q. Were you not here when Dr. Quijano said that he had a
03:50:40PM 10 fixed delusional and the beliefs that he expressed during his
11 interview were unchanging and unlikely to be changed during
12 the course of the trial?

13 A. Yes, sir. I remember that.

14 Q. And a client that maintains those beliefs during the
03:50:53PM 15 course of the trial, is he not -- is there not some reason to
16 believe he is incompetent?

17 A. Yeah, if those beliefs are such that they are impairing
18 his appreciation of various components related to competency.

19 Q. In Dr. Quijano's report -- first off, just to be clear,
03:51:58PM 20 what you are calling the components of competency are the
21 series of questions that Dr. Quijano asked about who the judge
22 is, what does your attorney -- no, who is your attorney, so
23 the direct questions he was talking about when he testified;
24 is that correct?

03:52:18PM 25 A. Not exactly.

1 Q. Well, to be more clear --

2 MR. RYTTING: If I may approach the witness.

3 THE COURT: You may.

4 BY MS. ODEN:

03:52:42PM 5 Q. On Page 9 is the series of questions that resulted in the
6 first full paragraph on Page 9, correct? That's been talked
7 about, what you call the components of the competency exam.

8 A. Point it out to me.

9 Q. (Indicating.)

03:53:11PM 10 A. Now, what is your question?

11 Q. Is that what you consider the components of a competency
12 exam?

13 A. No, sir.

14 Q. Now, you realize that at -- well, let me ask another
03:53:51PM 15 question.

16 Isn't that section you just looked at -- can I
17 ask what you are referring to?

18 A. I was just moving my stuff around.

19 Q. Is that section I just showed you on Page 9 what
03:54:09PM 20 Dr. Quijano considers to be his competency exam as opposed to
21 his psychiatric injury?

22 A. Yeah. At that point in his report on that page, he was
23 getting into competency issues.

24 Q. And isn't clear, even from this part of the exam, that
03:54:26PM 25 Mr. Aldridge did not understand basic facts about the legal

1 system?

2 A. I don't recall. What are you referring to?

3 Q. Well, doesn't he say right here the prosecution witnesses
4 say what they are told to say and whatever they think they
03:54:43PM 5 should say?

6 A. Close enough.

7 Q. Isn't that what it says?

8 A. That's what it says. That's close enough for competency.

9 Q. And you have been doing competency exams for how long?

03:54:54PM 10 A. Well, actually, I started in '75 during that year of
11 intern --

12 Q. You have done hundreds of them?

13 A. Probably thousands.

14 Q. And you have used methodology like this?

03:55:04PM 15 A. Like what?

16 Q. In which this is good enough for competency.

17 A. Yes, sir.

18 Q. For even a defendant like Mr. Aldridge who is seriously
19 mentally ill and clearly floridly psychotic during the
03:55:20PM 20 interview?

21 A. I don't know how psychotic he was. Quijano thought he
22 was psychotic, but he wasn't so psychotic he couldn't answer
23 competency questions.

24 Q. Was he so psychotic that he gave the account of the crime
03:55:28PM 25 that we have gone over several times in this case in which

1 there are spirits that are raping and assaulting him?

2 A. Sir, when you move away, I can't hear you over here. I'm
3 sorry.

4 Q. I'm sorry. Well, he gave an account in the forensic
03:55:43PM 5 interview. He took down a report in which he was so
6 delusional and so psychotic that he thought that -- that he
7 reported that spirits were sexually assaulting him and forcing
8 him to kill the victim; isn't that correct?

9 A. That's one of the -- that's the stuff he told Quijano.

03:55:59PM 10 Q. Right. That's what he told Quijano. And Quijano
11 testified that he firmly believed that, did he not?

12 A. Right.

13 Q. And he testified not only that he believed it during --

14 A. Well, I'm not sure if he testified that he firmly
03:56:11PM 15 believed it. He testified that he thought the defendant
16 firmly believed it.

17 Q. That -- of course.

18 A. Right.

19 Q. Of course. I didn't mean to think that Dr. Quijano
03:56:25PM 20 thought this was what the crime was.

21 Now, you agree that certainly by the time of
22 trial, Mr. Aldridge was experiencing -- was in a full-blown
23 ep -- not episode -- but his schizophrenia was full blown,
24 correct?

03:57:12PM 25 A. I really don't know. I mean, he was still in a

1 schizophrenic process at that time. How full blown it was, I
2 don't know.

3 Q. Then you realized he had a fixed delusional system at
4 that time, correct?

03:57:25PM 5 A. Well, he had a delusion system. I mean, it is fixed by
6 definition. A delusion is a delusion.

7 Q. One of the things you fastened upon was the day that he
8 bought the gun.

9 A. Say again.

03:57:44PM 10 Q. One of the things that you fastened upon was the day that
11 he bought the gun and his conduct at that time.

12 A. Right.

13 Q. But we know very little about the conduct at that time,
14 don't we?

03:57:54PM 15 A. On that day, correct.

16 Q. And we know very little about his beliefs and his
17 mentation on that day, do we -- right?

18 A. On that particular day, we don't know what he was
19 thinking or saying, other than filling out the form.

03:58:07PM 20 Q. Turning to another piece of information, you testified on
21 direct exam that when he entered the Texas Department of
22 Criminal Justice, that he didn't exhibit signs of mental
23 illness; is that correct?

24 A. I testified to that?

03:58:36PM 25 Q. Did you -- I just asked.

1 A. It's a question?

2 Q. Did you?

3 A. No. The -- whoever was taking -- doing that intake
4 documented symptoms. I mean, I remember reading the report.

03:58:49PM 5 But he also -- I think I testified that he also showed
6 rationality in talking about he had a good appeal because his
7 lawyers didn't call the doctor to his -- to testify for him.

8 Q. Well, do you think he had a good appeal?

9 A. I don't know. That's a legal question.

03:59:12PM 10 Q. Do you think he understood the legal ramifications or the
11 legal posture of his case?

12 A. Posture?

13 Q. Yeah.

14 A. No, not unless he at least went to a year or two of law
03:59:27PM 15 school.

16 Q. Well --

17 A. I mean, I don't know of a criteria that says he has to
18 understand a, quote, legal posture of his case to be
19 competent.

03:59:38PM 20 Q. No. I'm just saying you -- this is one piece of
21 information here. He says -- in which they report he says
22 that he has a good -- something like a good prospect for
23 appeal, and that's it. What does that tell you about his
24 mental state? Why would he say that --

03:59:56PM 25 A. I think it is important --

1 Q. -- as a condition of rational?

2 A. I think it is important because the position you are
3 portraying is as if -- if someone is schizophrenic, it's like
4 they don't have a moment of lucidity or rationality for the
04:00:10PM 5 rest of their lives. And that's just not the way it works.

6 There are lots of moments of rationality and
7 lucidity, and here -- the guy has just been sent to death row;
8 and, yet, he is still having moments of clarity on admission
9 to T.D.C. or T.D.C.J.

04:00:29PM 10 Q. Define clarity. What is clarity for you, Doctor?

11 A. His position at that time, if that's what we are talking
12 about -- or do you want some sort of global definition of
13 clarity?

14 Q. I want to know what you think clarity is and how you made
04:00:42PM 15 the diagnosis that there -- or made the -- formed the opinion
16 based on a couple of sentences that he was having a moment of
17 clarity.

18 A. He was aware at that moment and was able to rationally,
19 coherently inform that social worker or whatever that a
04:01:01PM 20 psychologist that evaluated him was not called to testify on
21 his behalf; and so, he thinks he has an appeal. That, to me,
22 is a pretty good legal understanding, at least in some sort of
23 strategic fashion about an appeal. And here we are on an
24 appeal, I guess.

04:01:17PM 25 Q. And you don't even know how he formed that belief, do

1 you?

2 A. I don't know how anyone forms a belief other than through
3 experience.

4 Q. You don't even know --

04:01:25PM 5 A. Let me finish answering the question.

6 -- other than through experience.

7 Q. You don't even know if even Randolph Bates told him:

8 Hey, you have a good chance for appeal, Aldridge, as he goes
9 down to -- led away.

04:01:41PM 10 A. I don't know that Bates said that. But if -- you know,
11 if he got that advice from his lawyer, he obviously is able to
12 benefit from his lawyer's expert advice.

13 Q. He is obviously able to repeat it.

14 A. Yeah.

04:01:54PM 15 Q. Which is different from being able to understand it,
16 isn't it?

17 A. Well, if you can repeat it, it's at least one step toward
18 understanding.

19 Q. And during that same -- but wouldn't you say the more
04:02:12PM 20 important forensic information is the further discussion that
21 followed in which it is found that he was suffering from
22 auditory and visual hallucinations day and night, command
23 hallucinations including commands to hurt himself and others,
24 hallucinations interfering with sleep, poor concentration, et
04:02:33PM 25 cetera?

1 A. Right.

2 Q. Not to mention persecutory and grandiose hallucinations
3 and the possibility he believes himself to possess special
4 powers.

04:02:49PM 5 A. Right. It is a lot.

6 Q. That is a lot. And isn't that the most important
7 forensic information in this file?

8 A. Regarding what? Important relevant to what?

9 Q. Relative to a -- relative assessment of whether he was
04:03:09PM 10 competent to stand trial.

11 A. No.

12 Q. And whether he was --

13 A. That is post admission to T.D.C. jail but not necessarily
14 relevant at all to his competence to stand trial in 1990.

04:03:22PM 15 Q. Well, you have no information at all that he had a moment
16 of clarity in between Dr. Walter Quijano's interview and the
17 interview in T.D.C.J. and certainly no information that he had
18 such a moment of clarity during the trial, do you?

19 A. He had moments of clarity apparently, pretty obviously,
04:03:49PM 20 during Quijano's interview, was able to answer questions
21 related to competency. There apparently were lots of moments
22 of clarity interacting with his lawyers during the course of
23 the trial.

24 Q. So, in your view -- well, we don't even know how he
04:04:05PM 25 answered to Quijano. We don't know if he nodded his head up

1 and down to these questions or not, do we?

2 A. Well, in a sense I have two reports to believe. Here's
3 his or Mosnik's. And Mosnik has got no information whatsoever
4 about his responses.

04:04:20PM 5 Q. That wasn't the question. The question was: We don't
6 know how he reacted to Dr. Quijano's questions, whether he
7 just nodded up and down.

8 A. I believe we do. I believe Quijano did a good job at
9 times quoting and other times summarizing what the defendant
04:04:40PM 10 told him at that time.

11 Q. Is the method that Dr. Quijano described directing --
12 using direct questions and operationalizing the question the
13 method that you use when you are determining competency?

14 A. Our methodologies are similar.

04:05:19PM 15 Q. Well, that wasn't the question. Do you use -- you heard
16 him describe how he questioned people after he's conducted his
17 clinical interview.

18 A. Yes.

19 Q. And he says: I use direct questions. And he gave some
04:05:34PM 20 examples of his direct questions.

21 A. Yes.

22 Q. And he says: I operationalize the concept. Is that what
23 you do?

24 A. Yeah, basically. You want to ask operationalized
04:05:46PM 25 questions so that you have a standardized approached --

1 approach, rather.

2 Q. So, you, like Dr. Quijano, use the clinical interview and
3 then structure for -- change the questions that you ask based
4 on your diagnosis. Is that fair to say?

04:06:07PM 5 A. No.

6 Q. Well, tell me why that's not fair to say.

7 A. Because the question doesn't make sense.

8 Q. I will let it go at that.

9 Now, you said several times when you were
04:06:48PM 10 deposed, did you not, that what you were mainly doing was
11 grading Walter Quijano's papers. In fact, that was the phrase
12 you used, "grading his papers."

13 A. Yes, sir.

14 Q. Is that what you are doing now? Is that what your
04:07:06PM 15 opinion is based on now, grading -- mainly on grading his
16 papers?

17 A. Well, it was initially a big focus of what I was doing;
18 but I certainly wasn't limited to it. I mean, I wound up
19 grading Mosnik's paper and Walter's paper. And we are going
04:07:23PM 20 to wind up getting -- and have and will get into all kinds of
21 areas.

22 Q. Now, you testified that you didn't see anything between
23 the time of the commission of the -- you know, pre arrest that
24 had to do with his delusional accounts of the crime or his
04:08:14PM 25 legal situation, correct?

1 A. I didn't think so. There was a letter that did have some
2 sexual references to it. I want to say it was about six
3 months before the crime. But nothing close to his specific
4 excuse about the guy sexually assaulting him.

04:08:34PM 5 Q. But you are aware of our -- I believe it is our
6 Exhibit 3, which is the letter dated January 6th, 1990,
7 correct?

8 A. Right. Just after the crime.

9 Q. Right. And he talks about that masons and others that
04:09:02PM 10 plotted against him --

11 A. Right.

12 Q. -- to stop his release from prison; is that correct? Do
13 you remember that?

14 A. Yes, sir.

04:09:10PM 15 Q. And he also talked about his flight, correct?

16 A. His runaway flight, you mean?

17 Q. Yeah. His supposed flight --

18 A. Right.

19 Q. -- from the crime?

04:09:25PM 20 A. Right.

21 Q. In this letter. And it is thoroughly delusional; is it
22 not?

23 A. It appears to be, yes, sir.

24 Q. In fact, every line of this seems to be thoroughly
04:09:40PM 25 delusional.

1 A. Seems to be.

2 Q. Well, there's no question that Mr. Aldridge firmly
3 believes what's in this document, right?

4 A. I'm not convinced of that yet.

04:09:49PM 5 Q. What grounds do you have to think that he doesn't believe
6 every line that's written in this document?

7 A. I'll do it this way. Maybe this will cut through some --
8 save us some time.

9 Q. What grounds, independent of that book that you have,
04:10:18PM 10 based on the evidence?

11 A. This will be related to the evidence.

12 Q. Furthermore --

13 A. (Witness reading from textbook.) When you are looking at
14 psychosis in defendants --

04:10:35PM 15 MR. RYTTING: I'm going to have to object to him
16 just reading from a textbook.

17 A. I'm not going to just read from the textbook.

18 -- pleading insanity, one of the things you
19 look at is a non-psychotic alternative rational motive for the
04:10:48PM 20 crime. Do you have to explain the crime only in terms of a
21 psychotic explanation, especially when it is provided by the
22 defendant; or is there any evidence of alternative solutions?

23 I'm still answering your question about the
24 letter of January 6th.

04:11:02PM 25 BY MR. RYTTING:

1 Q. I don't see how you are answering my question.

2 MR. RYTTING: And I object to the -- well, I think
3 it was nonresponsive to the question --

4 THE COURT: All right.

04:11:07PM 5 MR. RYTTING: -- just to pull out a book and start
6 reading from it.

7 MS. ODEN: Your Honor, he wasn't reading from it.

8 MR. RYTTING: If they want to do that on redirect,
9 they can.

04:11:13PM 10 MS. ODEN: I think he was pointing at a chart.

11 THE COURT: All right.

12 MR. RYTTING: I don't know if any of this is in
13 evidence. It's an attempt to get a learned treatise into
14 evidence. And I don't even know why he has it up there on the
04:11:27PM 15 stand.

16 THE COURT: All right. I'm going to sustain the
17 objection to the responsiveness of the answer. Let's go on to
18 something else.

19 MR. RYTTING: May I ask him to remove that from the
04:11:36PM 20 lectern?

21 THE WITNESS: Do you want me to take it to the
22 table, Your Honor?

23 THE COURT: No, you can just leave it.

24 MR. RYTTING: Leave it there. Put them to the side.

04:11:57PM 25 BY MR. RYTTING:

1 Q. When I said evidence, I mean something in the record.
2 Let's leave it to that.

3 What in the record -- what in the record
4 includes our exhibits, including those reports of the other
04:12:21PM 5 psychologists that have actually interviewed the defendant.
6 What have you seen that makes you -- and the testimony at
7 trial -- at the evidentiary -- what makes you believe that he
8 didn't believe -- what makes you think he didn't believe every
9 single line of this document?

04:12:36PM 10 A. The day of the crime, we're talking about somewhere after
11 5:00 a.m. --

12 Q. I am asking about this document. Well, maybe he's --
13 point to something that he doesn't believe in.

14 MS. ODEN: Your Honor, if he could be permitted to
04:12:49PM 15 answer the question.

16 THE COURT: Let's let him answer.

17 MR. RYTTING: Okay. I'll strike that last question
18 and just ask him to --

19 BY MR. RYTTING:

04:12:55PM 20 Q. Point to a sentence in this document that you believe
21 Mr. Aldridge -- that you think Mr. Aldridge doesn't believe
22 in.

23 A. No. I can't. I don't know.

24 Q. And we can say the same about by his other letters that
04:13:19PM 25 have been introduced into evidence. Can you can point to a

1 single line in there in which you can say: I have reason to
2 doubt that Mr. Aldridge believes this sentence?

3 A. He's going to claim belief in all of that, sir.

4 Q. Sure he is going to claim belief.

04:13:35PM 5 A. Correct.

6 Q. And the reason he is going to claim belief is because he
7 actually believes it.

8 A. That is your argument. That's your position. I don't
9 have to believe everything a defendant says, and I'm not
04:13:50PM 10 supposed to. I am supposed to be skeptical about it.

11 Q. Well, didn't Dr. Quijano testify that he thought that
12 everything he said in his interview was true?

13 A. Right. And I thought Quijano -- right. And I thought --
14 one of my criticisms was Quijano didn't do enough to assess
04:14:08PM 15 malingering.

16 Q. Do you think that the antisocial personality disorder is
17 an appropriate diagnosis for this client after the -- say,
18 after 1986?

19 A. No. It was before that, but not after that.

04:14:37PM 20 Q. At your deposition you were shown what is R -- Exhibit 4.
21 And I would like to approach the witness.

22 A. I recall this. I don't know the date that it was
23 written.

24 Q. Would you argue if it was -- the date was during voir
04:15:34PM 25 dire in this case?

1 A. No, sir.

2 Q. And during your deposition, you indicated a note like
3 this was -- should occasion further investigation another
4 psych -- perhaps another psychological interview; isn't that
04:15:53PM 5 correct?

6 A. Well, possibly.

7 Q. Well, do you believe that now?

8 A. Well, after listening to Davis' testimony, I thought that
9 if he had enough evidence or concern to trigger another
04:16:08PM 10 evaluation, he would have done it. So, apparently that letter
11 wasn't enough to trigger his concern that if there hadn't been
12 enough, like, deterioration in his client or something.

13 Q. I didn't ask about Davis' concern. I asked about yours.
14 This -- you have a client -- or a defendant diagnosed such as
04:16:34PM 15 Mr. Aldridge. You have a psychological interview pretrial
16 disclosed that he is delusional and has a fixed delusional
17 system centered on his legal situation and on his... He is
18 paranoid. And this letter comes out near the time of trial,
19 approximately 30 days after the first interview.

04:16:55PM 20 Say you were the -- retained by the defense,
21 and you get this letter. What would you recommend they do?

22 A. Nothing. Go to trial if they thought the guy was
23 competent.

24 Q. If they thought the guy was confident?

04:17:11PM 25 A. If I thought the guy was competent, I could still take it

1 to trial. You asked me what I would do if I was legal
2 counsel, right?

3 Q. No. If you were advising legal counsel.

4 A. If I --

5 Q. If they said: Hey --

6 A. I'm sorry?

7 Q. -- this is what we are getting from our client -- if they
8 said: Hey, this is what we are getting from our client,
9 letters like this --

04:17:30PM 10 A. Right.

11 Q. -- would you recommend --

12 MS. ODEN: Objection, Your Honor, to the
13 characterization of letters in the plural. There is no
14 indication that there was any other communication from

04:17:40PM 15 Mr. Aldridge aside from this note that was of this nature.

16 THE COURT: All right. The question is: If you
17 were advising defense counsel in your capacity as an expert
18 and you got -- and they got a letter like this, which you saw,
19 what would you recommend they do?

04:17:53PM 20 A. I would ask them questions. I wouldn't make a
21 recommendation based on one letter.

22 BY MR. RYTTING:

23 Q. And if you had information from defense counsel -- I
24 mean, from defense counsel that had -- that was similar to

04:18:06PM 25 what Mr. Bates testified to regarding the irrationality of his

1 conversations with the client and about his client that he was
2 being pursued by -- pursued and there was a conspiracy against
3 him and you had information from lead counsel saying this is
4 how our client is throughout our representation, what would
04:18:33PM 5 you recommend him do near the time of trial?

6 A. I wouldn't recommend anything until I asked the lawyers a
7 series of questions.

8 Q. Well --

9 A. Sir?

04:18:46PM 10 Q. And what would you ask them?

11 A. I would say: Guys -- I would meet with both of them, and
12 I'd say: Guys, give me your sense of his understanding about
13 facts of the case. You tell me what you think he knows he's
14 charged with. Does he know how serious it is? Does he know
04:19:16PM 15 what the punishment is? I would launch into other questions.
16 It would be very similar to the same competency questions I
17 would ask the defendant.

18 I would ask the lawyers: Is he able to -- is
19 he aware of -- does he demonstrate sufficient ability to
04:19:30PM 20 understand who you are? Does he know what the judge is doing?
21 Does he know what a jury is? Does he know what the DA is
22 after, what's their role?

23 Q. And we have no evidence that this was done by the defense
24 counsel near the time of trial?

04:19:46PM 25 A. Well, you just asked me a hypothetical. I don't know in

1 that sense what was done.

2 Q. I am just asking -- I'm asking another question. Do you
3 have any evidence that this was done from the testimony that
4 you heard today?

04:19:55PM 5 A. No.

6 Q. I would like you to go on the record saying that even if
7 you had all the evidence that's come before you, that you've
8 seen -- let's call it pretrial that came -- that -- evidence
9 of Mr. Aldridge's condition pretrial, you would not recommend

04:20:29PM 10 to defense counsel, if you were retained as their expert, to
11 get a competency hearing?

12 A. They got a competency hearing. You mean competency
13 opinion from Quijano?

14 Q. No. Competency hearing. Do you know what a competency
04:20:46PM 15 hearing is?

16 A. Yes.

17 Q. Okay. Would you not recommend that they request one?

18 A. They could request one; but if they already hired an
19 expert that said he was competent, what they've got to do
04:20:59PM 20 before they get a hearing is request another competency exam,
21 wouldn't they?

22 Q. Is that your understanding of the standard?

23 A. (No response.)

24 Q. How long have you been doing this work again?

04:21:09PM 25 A. Wait a minute. They already have a competency opinion

1 that the guy is competent. Now the prosecution is going to
2 say: We don't want to go to court and argue. He is
3 competent. Don't they have to get another opinion before they
4 request a hearing. They're going to request --

04:21:26PM 5 Q. That's your understanding of --

6 A. I think so.

7 Q. Okay.

8 A. I think so. I mean, I'm no lawyer.

9 Q. Let me just clarify. Would it surprise you to know that
04:21:33PM 10 what you can -- all you have to do is have -- you must request
11 a hearing --

12 A. Yeah.

13 Q. -- if you have clear evidence raising a bona fide or
14 substantial doubt about your client's competency from any
04:21:46PM 15 source?

16 A. Okay. I'll take your word for it.

17 Q. And here we have a history of pronounced irrational
18 behavior, do we not?

19 A. There was a lot of irrational behavior reported pre --

04:22:02PM 20 Q. We have a history of pronounced irrational behavior.
21 Isn't that what Dr. Quijano testified?

22 A. Yeah, there was a lot of irrational behavior.

23 Q. And you agree with that?

24 A. There was a lot of irrational behavior.

04:22:15PM 25 Q. And we have testimony of his relatives about this --

1 about this history of irrational history. Cheryl Aldridge,
2 Virginal Aldridge, Gladys Aldridge, and the other sisters
3 whose statements were in the record.

4 A. Right.

04:22:32PM 5 Q. And this was all available to counsel at the time of
6 trial, correct?

7 A. Right.

8 Q. Now, you -- do you believe you are in a position, sitting
9 right there, to make a determination, 19 years later, about
04:23:10PM 10 whether Mr. -- about whether Mr. Aldridge was competent to
11 stand trial, without having interviewed this client?

12 A. With limitations. And that I could be at a disadvantage
13 in terms of reliability and accuracy because I didn't get to
14 examine him.

04:23:31PM 15 Q. And, in fact, you realize that he was -- he was paranoid?

16 A. He was --

17 Q. Paranoid, correct?

18 A. Apparently.

19 Q. Paranoid?

04:23:50PM 20 A. Apparently.

21 Q. Yeah. Do you have any reason to think that he wasn't?

22 A. No. That wasn't the problem, that he was paranoid.

23 Q. And you realize that he incorporated and has a history of
24 incorporating attorneys and judges into his delusional system;
04:24:11PM 25 isn't that right?

1 A. Yes, sir, among other things.

2 Q. And you don't know at all whether at trial Mr. Aldridge
3 had incorporated the judge or his attorneys into his
4 delusional system?

04:24:28PM 5 A. As I sit here now, I don't recall all those details. I
6 remember him expressing concern about whether or not his
7 lawyers wind up a part of the conspiracy. I forget what he
8 said about the judge.

9 Q. Well, didn't he say in his -- well, he may not have said
04:24:52PM 10 anything about the judge.

11 A. Well, just based on your --

12 Q. The point is we don't know -- he has a history of
13 incorporating people in the legal system to his delusional
14 system, and we don't know if he thought that the judge who was
04:25:03PM 15 supposed to be trying his case was conspiring against him
16 in -- as part of his wild and fixed delusional system, do we?

17 A. I guess not.

18 Q. And there would be no way to tell without a hearing at
19 the time of trial that explored that, is there?

04:25:20PM 20 A. No. I mean, there could be other data available that
21 might reflect that.

22 Q. And -- or we can put it this way. There is some evidence
23 that he's already incorporated his attorneys into his
24 delusional system and thought they were conspiring against
04:25:43PM 25 him, isn't there?

1 A. Yeah. The paranoid beliefs about lawyers was there. It
2 has been there for a long time, apparently.

3 Q. And we have Brenda Garrett's statement that's in evidence
4 that says that he thought his attorneys were conspiring
04:26:00PM 5 against him.

6 A. Right.

7 Q. We have Quijano who said that he would wait and see --
8 who reports that Mr. Garfield said he would wait to see if his
9 attorneys would conspire against him.

04:26:09PM 10 A. Right.

11 Q. Now, is that a -- do you think that's a rational
12 understanding about what your attorney is or will do?

13 A. No, not necessarily. It doesn't make him incompetent at
14 the time, but that's not necessarily delusional.

04:26:27PM 15 MR. RYTTING: No. That's not responsive. I ask
16 that that be stricken.

17 THE COURT: Sustained.

18 MR. RYTTING: Your Honor, I will pass the witness.

19 THE COURT: All right. Thank you.

04:27:18PM 20 MS. ODEN: Briefly, Your Honor.

21 THE COURT: All right.

22 **REDIRECT EXAMINATION**

23 **BY MS. ODEN:**

24 Q. Dr. Allen, you have reviewed quite a few police reports
04:27:26PM 25 as a forensic psychologist, right?

1 A. Many.

2 Q. And in your experience, do police officers make an
3 attempt to record suspects or defendants' statements that may
4 reveal a potential legal defense to a crime?

04:27:43PM 5 A. Yes.

6 Q. Why was that sentence in Dr. Quijano's report, the
7 sentence that I believe said prosecution witnesses say what
8 they're told to say. They say what they think they should
9 say? Why is that good enough for competency?

04:28:05PM 10 A. Well, and given the guy's history, I thought it reflected
11 a sense of the paranoia that prosecution witnesses are going
12 to be against him. Okay. But he then qualified it with the
13 second sentence or phrase. I forget. But on the one hand,
14 they are going to say what the prosecution tells them to say.

04:28:29PM 15 That's paranoid.

16 Q. But they say what they think they should say?

17 A. But then he qualified it with they are going to say what
18 they think they should say.

19 Q. And why is that enough for competence?

04:28:47PM 20 A. Because in everything I have read about what the standard
21 is, you are not talking about some capacity to talk the
22 philosophy of law or theory of defense or anything like that
23 but rather basic concepts that reflect sufficient ability to
24 deal rationally and factually with the system or your lawyers.

04:29:18PM 25 That's it.

1 Q. And would it be an uncommon belief for a defendant to
2 have that the prosecution witnesses say what they're told to
3 say?

04:29:32PM 4 A. Well, that's true. I mean, I've had that response on
5 many occasions where, you know, if they're a prosecution
6 witness, if their lips are moving, they are lying, that kind
7 of an attitude. And they are not mentally ill. They are in
8 jail. They are angry. They are scared.

04:29:53PM 9 Q. If Mr. Aldridge was psychotic enough to give this crazy
10 account of his crime to Dr. Quijano and if he firmly believed
11 that crazy account, why is that alone not enough to make him
12 incompetent?

04:30:19PM 13 A. The way I approach it, the way I have been taught to
14 approach it is that the account in an insanity defense is an
15 excuse. This is my excuse so I don't get criminally
16 prosecuted. And that's important in America law, that if you
17 don't have that capacity to appreciate wrongfulness --

18 MR. RYTTING: May I -- I thought the question was
19 about competency.

04:30:37PM 20 MS. ODEN: Judge, if he could just be permitted to
21 finish his sentence, I'm sure we would see the relevance to
22 the question.

23 THE COURT: All right. Go ahead.

24 A. I've lost it now. What's the question?

04:30:48PM 25 BY MS. ODEN:

1 Q. The question was: If Mr. Aldridge was crazy enough to
2 give a crazy account of the facts of the crime to Dr. Quijano
3 and he firmly believed that delusional account, why is that
4 alone not enough to make him incompetent?

04:31:06PM 5 A. Because competency has to do with sufficient present
6 ability to appreciate the legal proceedings and that all that
7 craziness has to be so severe that it impairs his ability to
8 rationally cooperate and collaborate with his attorneys in his
9 own defense. You've got to have both, and all it talks about
04:31:36PM 10 is sufficient present ability. And you can be mentally ill
11 and have that ability.

12 Q. Okay. Did you review the testimony at trial of Jorge
13 Guerra who was the pawnshop clerk? He testified at
14 guilt/innocence.

04:31:56PM 15 A. Oh, yeah. Yes.

16 Q. Did you take into consideration his testimony that when
17 Mr. Aldridge came in to buy the gun, he was not acting crazy?

18 A. He testified that there -- right, he was not acting
19 crazy. Nothing he said indicated a disorganized behavior or
04:32:18PM 20 thinking that's so typical of schizophrenics that are active
21 with their thought disturbance. That's true. I had forgotten
22 about that.

23 MS. ODEN: For the Court's records, that's Volume 16
24 of the reporter's record at Page 25 and 26.

04:32:35PM 25 BY MS. ODEN:

04:32:55PM 1 Q. I would like to talk a little bit about the kinds of
2 questions that Dr. Quijano was asking in his competency
3 evaluation and I believe the kinds of questions you've said
4 you asked in your competency evaluations. Mr. Rytting wanted
5 to know if there was any evidence of moments of clarity
6 between Dr. Quijano's evaluation and Mr. Aldridge's entry into
7 T.D.C.J. for death row.

8 Those questions that are asked in a competency
9 evaluation, can they be answered with nods?

04:33:14PM 10 A. Actually, it is possible, I suppose. What comes to mind
11 isn't someone who is mentally ill but someone who is hearing
12 impaired and sometimes you have to apply competency standards
13 to those people.

14 Q. Okay. Well, let's bring it to this case specifically.
04:33:35PM 15 For example --

16 A. Okay.

17 Q. -- Dr. Quijano, if you will recall, said that an example
18 of a question was: Do you understand your Fifth Amendment
19 right? What is it? What is the purpose of your Fifth
04:33:49PM 20 Amendment right?

21 Can those kind of questions -- could
22 Mr. Aldridge have answered those kinds of competency questions
23 by nodding?

24 A. No.

04:33:59PM 25 Q. Would he have had to answer with words to communicate?

1 A. Words, phrases, clauses, sentences, to some extent, yes.

2 Q. Okay. Mr. Rytting took back a question that he asked
3 that I think I would like you to answer. He asked: What
4 evidence in the record makes you think that Aldridge did not
04:34:33PM 5 believe every line of some of the writings that he produced?

6 And you began your answer with a phrase that
7 was something like: A non-psychotic rational alternative
8 explanation. Would you like to finish that answer?

9 A. Right.

04:34:50PM 10 I've mentioned earlier that what is important
11 is not only the psychiatric history but the criminal history.
12 To what extent does the crime in question match the
13 psychiatric history versus the criminal history?

14 Well, my opinion is that this crime matches a
04:35:08PM 15 criminal history that includes theft and robbery and shooting
16 people, you know. Post crime there was nothing that I could
17 see that reflected any kind of irrationality about the crime.

18 But, though impulsive, there was rational
19 interaction with Gladys Aldridge, rational explanations about
04:35:39PM 20 what he did, that he got into a struggle, that he killed the
21 guy, that he did a robbery, that he robbed the guy to make it
22 look like a robbery. Of course he killed the guy, so there
23 would be no witnesses. I mean, all of that was rational.
24 There was nothing there driven by hallucinations or delusions.

04:36:02PM 25 Q. So, why does that indicate to you that Mr. Aldridge may

1 not have believed every line of his explanations after arrest?

2 A. Because it appears to me, even though there was evidence
3 prior to buying the gun, prior to the crime, of weird beliefs
4 and crazy stuff, Hitler and people following, even though that
04:36:28PM 5 existed, the escalation in that really began to occur post
6 arrest.

7 You could even count the letter on January the
8 6th that he wrote during his escape where -- and in that
9 letter he actually incorporates, you know, his sister and a
04:36:46PM 10 couple of nephews into the letter but nothing about the sexual
11 assault, this alleged sexual assault.

12 Q. You heard Dr. Quijano testify about the importance of
13 perceiving a secondary gain in evaluating whether a person is
14 malingering or embellishing.

04:37:08PM 15 A. Right.

16 Q. Can you comment on that?

17 A. The basic idea in a criminal evaluation or any forensic
18 evaluation is to make sure you're clear on what any external
19 goal is, in some fashion to avoid prosecution and in civil
04:37:25PM 20 cases it's to win money. But that's a secondary gain issue.

21 And a big role for forensic psychologists and
22 psychiatrists is developed into this issue of competency to
23 stand trial. It's become something that experts are very much
24 involved in and -- as well as sanity at the time of the crime.

04:37:48PM 25 Q. Would any reliable or scientifically valid analysis of

1 the post-arrest statements of Mr. Aldridge have to address the
2 issue of secondary gain possibilities for him?

3 A. Of course. I mean, once you see there is arrest, then to
4 what extent is all of that useable in terms of a sanity

04:38:12PM

5 defense? And often what gets incorporated there is
6 incompetency because they often go hand in hand. That's not
7 to say that he has no symptoms.

8 Q. Is it common or uncommon for criminal defendants to have
9 suspicious beliefs about their attorney's trustworthiness?

04:38:29PM

10 A. Common.

11 Q. Does that indicate that they would be incompetent?

12 A. No.

13 Q. Why not?

14 A. It still boils down to whether or not there is enough,

04:38:46PM

15 sufficient cooperation still going on. I may just hate
16 lawyers. It doesn't mean I don't hire them. I may hate the
17 legal system. That doesn't mean I am not going to have a --
18 try to get a good lawyer if I wind up in the legal system.

19 So, too, you can be suspicious about your

04:39:09PM

20 lawyers, about the motives of lawyers; but it doesn't
21 automatically make you incompetent. It has to do with -- you
22 know, competency is very much a global concept. It is not
23 just one thing.

24 Q. And I would like to talk a little bit about what exactly

04:39:26PM

25 happens at a competency hearing. Hypothetically speaking, if

1 Doug Davis and Randy Bates had gotten the opinion that they
2 got from Dr. Quijano, that the defendant was competent, and
3 for some reason --

04:39:48PM 4 MR. RYTTING: I'll object to -- withdraw the
5 objection until later.

6 THE COURT: All right.

7 BY MS. ODEN:

8 Q. -- and so, they have this opinion that he is competent
9 and then later they decide they want a competency hearing, in
04:40:00PM 10 your experience if they presented Dr. Quijano as their witness
11 and then told the Court: We need -- we think that there's a
12 reason to believe he is not competent, would the Court make a
13 decision right then and there on the defendant's competence?
14 What would the Court do?

04:40:23PM 15 A. They would order another exam. Now, they don't have
16 hearings like that anymore. But in 1990 -- okay. You already
17 have a court-appointed expert. The lawyer still worried. The
18 prosecutor's position could be -- the expert you pick says
19 he's competent. What's there to have a hearing about? What's
04:40:50PM 20 there to argue about? We agree.

21 I think I'm answering your question.

22 Q. You are.

23 A. If they are that concerned, they would have -- in my
24 opinion, I think they would have to get -- or ask the judge
04:41:01PM 25 for another evaluation, which they can do.

1 Q. Were you here when Mr. Davis said that if there had been
2 a concern of his, that he would have informed the judge and
3 requested a second evaluation?

4 A. Right.

04:41:13PM 5 Q. And is that a common practice in your experience?

6 A. Very common. I've had cases where the -- it is
7 usually -- the motion is filed usually by the defense lawyer.
8 Okay? I'm concerned. I want a competency exam.

9 MR. RYTTING: I'll object to the relevancy to the
04:41:35PM 10 issues that we have in this proceeding, what's going on
11 generally in other cases that he knows about.

12 THE COURT: Sustained.

13 BY MS. ODEN:

14 Q. Having heard all of the questions that you have heard
04:41:44PM 15 from Mr. Rytting and considered all the evidence that you have
16 available to you, have you changed your opinion on whether
17 Mr. Aldridge was competent at the time he was tried in 1990.

18 A. No.

19 Q. Have you changed your opinion on whether he was sane at
04:42:01PM 20 the time he committed this offense?

21 A. No.

22 Q. And what are those opinions?

23 A. That he was, number one, competent to stand trial at the
24 time, consistent with Quijano's conclusions, and that he was
04:42:14PM 25 sane at the time of his crime.

1 MS. ODEN: No other questions, Your Honor.

2 THE COURT: All right. Mr. Rytting, do you have
3 anything further?

4 MR. RYTTING: Just a couple of questions.

5 **RECROSS-EXAMINATION**

6 **BY MR. RYTTING:**

7 Q. You mentioned a secondary gain; but you've heard
8 throughout, from every expert that testified, that there's no
9 evidence that Mr. Aldridge had any insight into his disease or
04:43:02PM 10 into his mental illness?

11 A. What does that have to do with secondary gain? I don't
12 understand your question.

13 Q. Well, isn't this business that you're talk -- when you
14 talk about secondary gain, you are talking about someone who
04:43:13PM 15 is making up their symptoms intentionally, volitionally, for
16 the purpose of bamboozling the Court or putting on an
17 insanity -- or putting on an insanity defense that really is
18 not legitimate, right? Isn't that what you're talking about?

19 A. No, sir.

04:43:29PM 20 Q. Well, then tell me what is this business of secondary
21 gain that --

22 A. There was a term that -- excuse me.

23 Secondary gain was a term that Quijano used.

24 When she asked me the question about it, I used the term

04:43:44PM 25 "external goal," like to avoid prosecution.

1 Q. So, do you think that -- you maintain that his external
2 goal is to avoid prosecution by giving a delusional account of
3 the crime?

4 A. Yes. Or to minimize punishment, yeah.

04:44:02PM 5 Q. And you do this without ever having interviewed him,
6 correct?

7 A. That's what everything points to, and I didn't examine
8 the guy --

9 Q. Even if --

04:44:13PM 10 MS. ODEN: If Dr. Allen could be permitted to finish
11 his answer.

12 THE COURT: Yes. Permit him to answer, please.

13 A. I didn't get to examine the guy now and I didn't examine
14 him in '90, but everything points to that.

04:44:25PM 15 BY MR. RYTTING:

16 Q. It points to an attempt to exaggerate his system -- his
17 symptoms in order to avoid prosecution, in your --

18 A. Or minimize punishment, yes, sir.

19 Q. Or minimize punishment?

04:44:37PM 20 A. Yes, sir.

21 Q. Okay. So, the question, then, is: How does someone --
22 you claim that he's doing this, that he is doing this to
23 minimize punishment. He is exaggerating his symptoms. At the
24 same time you realize he doesn't have insight into his
04:44:57PM 25 illness; is that correct?

1 A. No, sir.

2 Q. You don't have any reason to think he has insight into
3 his illness, do you?

4 A. Yes, sir.

04:45:04PM 5 Q. Dr. Quijano did not testify that he had insight into his
6 illness, and he examined him; isn't that correct?

7 A. Correct.

8 Q. And Dr. Brown examined him, too, and said he had no
9 insight into his illness.

04:45:14PM 10 A. Correct.

11 Q. But you, who have never examined the patient, are willing
12 to give this opinion -- this psychological opinion, even
13 though you agree that Dr. Quijano is a very competent --

14 A. Yes, sir. He is very good.

04:45:26PM 15 Q. -- psychologist?

16 And even though you have no idea of how the
17 field has changed -- that deals with schizophrenia has changed
18 in the last 20 years, correct?

19 A. I don't know how much it has changed. I mean, my
04:45:52PM 20 expertise is forensics, not schizophrenia.

21 MR. RYTTING: Pass the witness.

22 MS. ODEN: Doctor --

23 THE COURT: Can I just ask the witness one or two
24 quick questions?

04:46:06PM 25 Dr. Allen, did you review the evaluations that

1 were done in 1995 of Mr. Aldridge?

2 THE WITNESS: Yes, sir.

3 THE COURT: And do you agree that at least in 1995
4 Mr. Aldridge was incompetent to stand trial?

04:46:19PM 5 THE WITNESS: That's what it looks like in '95,
6 although even then I wish they had done more to assess the
7 malingering issue. But I know how the exams are that they do
8 in Harris County on a contract basis, too.

9 THE COURT: But you agree with the opinions of
04:46:36PM 10 Dr. Silverman and Dr. Brown in 1995 that Mr. Aldridge was
11 incompetent at that time to stand trial?

12 THE WITNESS: Well, if I can clarify, because there
13 was competency to stand trial, competency to waive counsel,
14 competency to be executed. Frankly, Judge, I don't know what
04:46:52PM 15 standard they are referring to or -- do you see my problem
16 there? If it was competent -- if it is only competency to
17 stand trial in 1995, I would have to lean in that direction.

18 THE COURT: All right. Okay. Go ahead.

19 **FURTHER REDIRECT EXAMINATION**

04:47:12PM 20 **BY MS. ODEN:**

21 Q. Talking about having insight into his own illness and
22 mentioning Dr. Brown and Dr. Silverman's reports, did you take
23 into consideration a statement in one of those reports
24 reportedly from Mr. Aldridge himself that he thinks he might
04:47:26PM 25 have been incompetent in the past but thinks he is better now?

1 A. I remember that, but I also --

2 Q. You laughed. Tell us. Tell us more.

3 A. Even that may not reflect insight, but the problem is

4 that insight to hallucinations is not absent 24/7 in a

04:47:48PM 5 schizophrenic. There are occasions where they have insight.

6 It is not something that's gone forever, every moment, every

7 second. So, it is a mischaracterization of insight works.

8 And the other problem regarding the issue of

9 insight isn't the presence of some of this stuff. It is the

04:48:10PM 10 prolific presence of every symptom. Most schizophrenics have

11 auditory hallucinations.

12 MR. RYTTING: I'll have to object that this is not

13 responsive. I'd like it to be question and answer rather than

14 a treatise.

04:48:24PM 15 THE COURT: All right. Overruled.

16 Go ahead.

17 A. 75, 80 percent have auditory hallucinations. About half

18 have visual hallucinations. But when you combine them, that

19 incidence goes down. And then when you start adding

04:48:39PM 20 somatosensory hallucinations where they have strange

21 sensations -- in this case he feels anal penetration. So, we

22 are talking some kind of tactile somatosensory hallucinations

23 which are much, much more rare. You rarely get those

24 combinations.

04:48:57PM 25 And when you get rare combinations in a

1 forensic criminal case, especially a murder case, the
2 likelihood of exaggeration, which means he has some insight,
3 goes up. And he could have auditory hallucinations. He can
4 have delusions. But the likelihood of all of these things is
04:49:18PM 5 incredibly small. I'm not saying it is absolute. But the
6 suspicion of exaggeration because of an external goal, you
7 ought to be incredibly suspicious. It is a sign of
8 exaggeration or malingering.

9 MS. ODEN: No other questions.

04:49:40PM 10 THE COURT: All right. Mr. Rytting.

11 **FURTHER RECROSS-EXAMINATION**

12 **BY MR. RYTTING:**

13 Q. Doctor, isn't that a classic example of hindsight bias?

14 A. No, sir. It's -- that is a classic example of what the

04:49:52PM 15 best writers and researchers in the field believe and what the
16 statistics show. And if you want me to reference the
17 textbook, I have it here. I will let you copy it.

18 Q. Are you not assuming, Doctor, that because he has so many
19 symptoms, that he must be exaggerating?

04:50:09PM 20 A. That's one criteria I would use combined with the other
21 criminological variables that I talked about.

22 MR. RYTTING: No further questions.

23 THE COURT: All right.

24 MS. ODEN: Nothing further.

04:50:21PM 25 THE COURT: Are we finished?

1 You may step down.

2 THE WITNESS: Thank you, Your Honor.

3 THE COURT: Thank you.

4 (Witness released)

04:50:23PM 5 MS. ODEN: We are done, Judge.

6 THE COURT: All right. Mr. Rytting.

7 MR. RYTTING: Just briefly, Your Honor, on rebuttal
8 we call Dr. Mosnik.

9 THE COURT: All right. Dr. Mosnik.

04:50:44PM 10 You are still under oath.

11 (DIANE MOSNIK, M.D., witness, sworn)

12 **DIRECT EXAMINATION**

13 **BY MR. RYTTING:**

14 Q. Dr. Mosnik, I want you to address the last discussion
04:50:56PM 15 that Dr. Allen had about whether multiple symptoms is an
16 indication of exaggeration and, therefore, an insight into a
17 patient's condition. What -- or how balanced do you think is
18 that chain of events in your experience in this field?

19 A. Well, I think those are two different things. I think it
04:51:19PM 20 is rare to see a patient with this number of symptoms. It
21 does exist. As Dr. Allen indicated, it does exist. And, in
22 fact, it is an indication of a greater severity of illness.
23 It is also present when the patient goes untreated for a
24 longer period of time.

04:51:35PM 25 And somatic delusions or whether or not they

04:51:51PM 1 are really somatic delusions or hallucinations -- which I
2 never said this patient had somatic hallucinations. I said he
3 had somatic delusions. So, to have a variety of types of
4 delusions is not as uncommon. To have a variety of types of
5 hallucinations is less common.

6 So, whether or not he -- you know, so, that
7 characterization of his symptoms is incorrect. So, he had
8 somatic delusions, which is more common. And I did not say
9 that he had somatic hallucinations. But the greater
04:52:13PM 10 presentation of symptoms like this and these delusions is
11 indicative of a more severe illness overall.

12 It is unrelated to his insight. And the fact
13 about insight is a patient either has insight into their
14 illness or not. They don't sometimes. Now, if you have a
04:52:32PM 15 fixed delusion or you experience hallucinations, you either
16 believe them or you don't. Once they are fixed, you don't
17 sometimes say: Oh, now I don't believe in it. And there's
18 certainly no indication in the record that at any point
19 Mr. Aldridge doesn't believe them, that there's any glimmer of
04:52:48PM 20 insight that he has expressed through any of his writings or
21 any of his statements from family members or anything like
22 that.

23 So, in fact, patients who don't have insight,
24 don't have insight for the length of their illness, unless
04:53:04PM 25 there's something to change the severity of their illness like

1 medication.

2 MR. RYTTING: Your Honor, I have no further
3 questions.

04:53:13PM

4 THE COURT: All right. Do you have any questions of
5 the doctor?

6 MS. ODEN: Very briefly.

7 **CROSS-EXAMINATION**

8 **BY MS. ODEN:**

04:53:19PM

9 Q. Doctor, what's the difference between a somatic delusion
10 and a somatic hallucination?

11 A. A somatic delusion is a belief. It is a fixed false
12 belief that is held even in the face of disconfirmatory or
13 contradictory evidence.

14 Q. Okay.

04:53:30PM

15 A. A hallucination is an actual physical sensation. Like an
16 auditory hallucination is an auditory sensation.

17 Q. So, you're saying that Mr. Aldridge has delusions but not
18 hallucinations that are somatic?

19 A. That's what I was given as his diagnosis, yes.

04:53:47PM

20 Q. So, you don't think that he really truly believes he
21 feels pain in his ear when the voice speaks in his ear?

22 A. Yes. I think that he believes that. I said he has
23 somatic delusions. He believes that.

24 Q. That's not a hallucination?

04:54:01PM

25 A. No. That's a somatic delusion.

1 Q. Okay. And you also said that -- that the greater number
2 of symptoms is an indication -- becomes present when it goes
3 untreated for so long?

04:54:17PM

4 A. I said that it can be an indication of more -- a greater
5 severity of illness.

6 Q. So, in other words, the longer it goes untreated,
7 potentially the more symptoms they will display or experience?

8 A. That can be.

04:54:30PM

9 Q. Okay. And you said either they have insight or not.
10 There's no glimmer of insight sometimes and no insight other
11 times; is that right?

12 A. In this case, yes.

13 Q. Okay. Doctor, when were you licensed as a psychologist?

14 A. The year that I was licensed?

15 Q. Yes.

16 A. I obtained my license in June of 2001.

17 Q. Thank you?

18 MS. ODEN: No other questions.

19 THE COURT: All right. Mr. Rytting.

04:54:51PM

20 MR. RYTTING: No, Your Honor.

21 THE COURT: Okay. Thank you. You may step down.

22 (Witness released)

23 THE COURT: All right. So, we are done with the
24 evidence in this case. Would the parties like to take a few
04:55:03PM 25 minutes to sum up orally, or do you prefer to do it in

1 writing?

2 MS. HAYES: As much as I hate to suggest it, I think
3 it would probably be better to do it in writing.

4 THE COURT: Mr. Rytting.

04:55:26PM 5 MR. RYTTING: I will agree with that unless the
6 Judge wants to hear a brief jury speech.

7 THE COURT: I have heard several already. What kind
8 of time line would you like to be able to submit your briefs
9 in?

04:55:48PM 10 MS. HAYES: What would be an estimate of when the
11 transcript is --

12 THE COURT: You need the transcript first. Okay.

13 What do we think on the transcript?

14 THE REPORTER: Three weeks.

04:56:05PM 15 THE COURT: Three weeks.

16 All right. About three weeks on the
17 transcript.

18 MR. RYTTING: If the Court would indulge me maybe a
19 brief statement, I do believe -- can I make one or two --

04:56:24PM 20 THE COURT: Sure. Sure. We have come this far. We
21 might as well.

22 MR. RYTTING: I mean, I would just like to make a --
23 make a closing statement that I believe we have shown that we
24 have met the standard of proof that showed that at the time of
04:56:44PM 25 trial neither the judge or the defense attorneys had the

1 requisite information regarding Mr. Aldridge's mental illness
2 and his incompetency to stand trial to meet the threshold that
3 obligated them to request a competency hearing.

4 And I don't believe that we have heard
04:57:08PM 5 testimony from the other side that indicates that there is any
6 reasonable way to determine competency. I think we have an
7 inordinate amount of evidence indicating that he was
8 incompetent to stand trial, and we also meet that threshold.

9 The extraordinary sickness of Mr. Aldridge was
04:57:30PM 10 present long before trial; continued throughout the entire
11 proceedings; and interfered, I think, absolutely with his
12 ability to assist counsel in any way. And the only glimmer of
13 hope that they could have to dispel the real solid
14 probability, if not certain that he was incompetent at trial,
04:57:57PM 15 would be to have had a hearing at that time, something that we
16 do not have on the record and it should have been done.

17 THE COURT: All right. Yes?

18 MS. HAYES: Admittedly, this is a hard case to go
19 reconstruct 20 years later. It is difficult because trial
04:58:20PM 20 counsel -- there aren't records available anymore, at least
21 for that area. But I think when the Court looks to the other
22 records, such as the HPD records and other statements, things
23 that are very important -- we're talking about explanations
24 that are provided by Mr. Aldridge right after the crime -- I
04:58:38PM 25 think those are certainly very important as far his level of

1 functioning, as well.

2 I believe also there's sufficient -- the Court
3 can certainly rely on what Mr. Davis has said about his
4 experience and his qualifications; that if something had
04:58:56PM 5 changed, then he would be aware of that and would make the
6 Court aware, make the trial judge aware. But he said that it
7 is prudent that Mr. Aldridge functioned pretty much the same,
8 and it was -- sometimes they couldn't communicate well; other
9 times they could. It wasn't a constant factor.

04:59:15PM 10 And so, with Mr. Davis and his experience that
11 he knows to do it and that he would have done it and would
12 have contacted the Court if there was really a problem, I
13 think there has to be a lot vested with that and that idea.

14 Overall, I think there's a lot of evidence
04:59:30PM 15 showing that he has a mental illness, varying degrees at
16 varying stages. And -- but if mental was it alone or if a
17 defendant with delusions would be rendered per se incompetent,
18 then we wouldn't be having to do the whole hearing. I think
19 there's a lot out there that proves about his functioning
04:59:47PM 20 level to assist that the Court should consider.

21 And on that grounds, then I don't believe that
22 they have made the standard that they need to for their
23 claims.

24 THE COURT: All right. Thank you.

04:59:57PM 25 Why don't we -- would 10 days after you receive

1 the transcript be sufficient to prepare your briefs?

2 Two weeks.

3 MR. RYTTING: Two weeks, Your Honor.

4 THE COURT: Two weeks. All right. We'll assume

05:00:12PM 5 that the transcript will be available in about three weeks,
6 but you'll have two weeks from the date the transcript is
7 available to submit briefs. And I'd like simultaneous briefs
8 by both sides. I don't want to go back and work on this any
9 more than we already have.

05:00:28PM 10 MS. HAYES: And with a page limit or --

11 THE COURT: Yes.

12 MS. HAYES: How limited do you want it?

13 THE COURT: No more than 25 pages. And you can
14 attach exhibits if you think you need to, but I think we
05:00:43PM 15 have -- you can just refer to the exhibits that are in the
16 record, I think. That should be sufficient.

17 All right. Is there anything else,
18 Mr. Rytting?

19 MR. RYTTING: No, Your Honor.

05:00:51PM 20 THE COURT: All right. Anything else from the
21 respondents?

22 MS. HAYES: Nothing, Your Honor.

23 THE COURT: All right. We are adjourned. Thank you
24 very much.

05:00:55PM 25 (Concluded)

1 * * *

2 I certify that the foregoing is a correct transcript from the
3 record of proceedings in the above-entitled cause, to the best
4 of my ability.

5 //s _____ 1/13/10
6 Stephanie Kay Carlisle-Neisser CSR, RPR Date
7 Official Court Reporter

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